

**Approaching Deliberative
Democracy:**

Theory and Practice

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CHAPTER 1

James M. Buchanan, John Rawls, and Democratic Governance

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Our world may have never before been so ruthlessly divided along the lines of extractive power between those with and those without access to productive means. And yet never before has the dominant ideology [of] . . . mainstream economics, and by association game theory . . . been so successful at convincing most people that there are no systematic social divisions; that the poor are mostly undeserving and that talent and application is all the weak need in order to grow socially powerful.

—Shaun P. Hargreaves Heap and Yanis Varoufakis¹

In a strictly personalized sense, any person's ideal situation is one that allows him full freedom of action and inhibits the behavior of others so as to force adherence to his own desires. That is to say, each person seeks mastery over a world of slaves.

—James M. Buchanan²

The financial crisis of 2008 provoked a lively discussion of its causes. For some, the collapse of the housing market stemmed from “progressive” attempts in the 1990s to make housing more affordable for the less well-off. For others, it was due to “neo-liberal” desires to relax government regulation of the free market.³ Whatever the explanation, the amount of the bailout was approximately the

¹ Shaun P. Hargreaves Heap and Yanis Varoufakis, *Game Theory* (London: Routledge, 2004), 262-3.

² James Buchanan, *Limits of Liberty* (Indianapolis: Liberty Fund, Inc., 1975), 92.

³ For a critique of “neo-liberal” policies, see Pierre Bourdieu, *Acts of Resistance: Against the Tyranny of the Market*, trans. Richard Nice (Oxford: Polity Press, 1998).

amount that the top one percent of American income-earners accumulated in the prior decade.⁴ This outcome may be interpreted as the instantiation of a new guiding principle of privatizing profits and socializing debt.⁵ Underneath these public policy decisions lie deep currents of political theory and, ultimately, of differing models of who we are and how we choose to be governed.

This chapter will look at two of these philosophies through the works of political theorist John Rawls, and political economist James M. Buchanan. Along the way, it will point out some ironies of recent neo-liberal views on the market and gesture toward a more deliberative way to address many of the problems that confront our society and the state that governs it.

If the progressive view of the 1930s was a combination of Keynesianism and welfare state socialism, we may identify today's neo-liberalism by the following tenets: First, private ownership is the way to solve the world's ills; second, redistribution is a form of theft; and third, no income or wealth-status disparity can be too great.⁶ There is a set of arguments underlying these tenets: (1) Private ownership solves the tragedy of the commons by providing incentives for agents to use resources "efficiently." (2) Because interpersonal comparisons of individuals' satisfaction cannot be based in scientific analysis, economists' only criterion for assessing people's welfare is "Pareto efficiency," or the idea that a community is better off if at least one person is made better off and no one is made worse off, regardless of distributional consequences.⁷ (3) No individual's free-

⁴ United States Senator Bernie Sanders reports on an Online Op-Ed column that the wealthiest 400 American citizens had a wealth increase of \$670 billion over the past eight years (<http://www.sanders.senate.gov/news/record.cfm?id=303313>, posted Sept. 19, 2008). These figures are consistent with the US Bureau of Census 2002 Current Population Survey figures used by Robert Rector and Rea Hederman, Jr. in "Two Americas: One Rich, One Poor; Understanding Income Inequality in the US," *The Heritage Foundation*, posted Aug. 24, 2004; for recent adroit commentary, see "Workingman's Blues," *The Economist*, posted July 24, 2008.

⁵ For commentary see "I Want Your Money," *The Economist*, Sept. 27, 2008, 17; and "World on the Edge," *The Economist*, Oct. 4, 2008, 11.

⁶ "A Question of Justice?: The Toll of Global Poverty is a Scandal. But Deploring Economic 'Injustice' is no Answer," *The Economist*, March 13, 2004, 13.

⁷ Daniel M. Hausman and Michael S. McPherson, "Economics, Rationality, and Ethics," *The Philosophy of Economics an Anthology*, 2nd ed., ed. Daniel M. Hausman (Cambridge: Cambridge University Press, 1993), 252-78.

dom is thwarted by the increase of another individual's wealth.

The writings of James Buchanan can serve to give us access to these ideas. *Calculus of Consent* (1962) argues that beginning with the premise of rational self-interest, individuals can design a constitution that at least minimally serves everyone's interests by building on virtually unanimous agreement.⁸ This view eventually cohered with libertarian confidence that the government that governs least, governs best. My book *Rationalizing Capitalist Democracy* (2003) was an attempt to demonstrate step-by-step the series of moves that went into rebuilding the theoretical underpinning of this version of capitalist democracy as a direct US Cold War response to communism, Marxism, and totalitarianism.⁹

Historically, however, as the 1960s gave way to the 1970s, the major theme on Buchanan's mind was that of social anarchy expressed in student protests, and what he took to be a general breakdown of social decorum. *Limits of Liberty* (1975) is a response to this latter problem of social order. Buchanan articulates his main theme on the first prefatory page: "'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 we observe."¹⁰ Buchanan intimates that we live in a dark world in which the only force sustaining social concourse is the sword.

Thus the turbulent and undisciplined 1960s and early 1970s are as important to assessing the origins of contemporary neo-liberalism as was the threat of communism and authoritarianism during the 1950s' reconceptualization of classic liberal principles. The Enlightenment era political economy of Adam Smith was predicated on the voluntary renunciation of any claims on others' personhood, property, and contracts, in keeping with sympathetic and impartial judgment of third-party injuries, personal conscience, and the legitimate rule of law. The central unifying

⁸ James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962).

⁹ S.M. Amadae, *Rationalizing Capitalist Democracy* (Chicago, Chicago University Press, 2003).

¹⁰ James Buchanan, *Limits of Liberty* (Indianapolis: Liberty Fund, Inc., 1975), ix.

theme was that of “negative liberty,” or the “no-harm principle”: each should be free to do as she pleases, so long as no one violates the integrity of another person or his possessions. The belief was that given the rule of law, restricted to commutative justice and banned from mandating redistribution, prosperity would emerge. Each person, in improving private affairs, will necessarily add to the joint stock comprising a nation. Voluntary consent was thought to be the basis of interactions in the market place, and subsequently also that of individuals’ social contract with government, as the franchise continued to increase throughout the nineteenth and twentieth centuries. By contrast, the neo-liberal justification of government is predicated on an analysis of individuals’ partially-aligned and partially-conflictual private preferences over social outcomes. An individual’s identity is formulated in terms of one’s logically-ordered preferences over all conceivable states of the world and one’s actual opportunities, instead of by the legal attributes of one’s personhood, property and contractual obligations. The predominant operating theme of this new relationship between the individual and government is contained in the “Prisoner’s Dilemma.”

Since its invention by two game theorists working at the Santa Monica-based RAND Corporation in the 1950s, a voluminous literature has amassed discussing this thought experiment’s paradoxical nature that seems to indicate the limitations of instrumental rationality. In their classic game theory textbook, Duncan Luce and Howard set forth the decision problem confronting two conspirators:

Two suspects are taken into custody and separated. The district attorney is certain that they are guilty of a specific crime, but he does not have adequate evidence to convict them at a trial. He points out to each prisoner that each has two alternatives: to confess to the crime the police are sure they have done, or not to confess. If they both do not confess, then the district attorney states he will book them on some very minor trumped up charge such as petty larceny and illegal possession of a weapon, and they will both receive minor punishment; if they both confess they will be prosecuted, but he will recommend less than the most severe sentence; but if one confesses and the other

does not, then the confessor will receive lenient treatment for turning state’s evidence whereas the latter will get “the book” slapped at him.¹¹

The *Prisoner’s Dilemma*, as this type of scenario is now referred to, is sometimes introduced as though each inmate faces the quandary of whether to be loyal to his former ally, risking a terrible outcome if the other does not take reciprocal action, or whether to protect himself by preemptively betraying his former partner. It may seem that the dilemma is about which action each agent should take, raising the question of whether to betray the other. However, this is not the bind the two individuals face because each prefers to cheat the other, regardless of what the other will do.

Consider a routine single-meeting bargaining situation, say, on the western frontier with one individual who has a gold coin, and another who has a horse. We may conceive of each hoping to secure both the horse and the gold coin for himself, but each also worrying about receiving the ‘sucker’s payoff’ of personal injury and no goods. If both would-be-traders cooperate, they achieve an amicable exchange; if they both renege, the coin is lost, and the horse runs away. According to the logic of game theory, any rational individual caught in such a situation will necessarily not cooperate, thereby achieving a worse outcome than would be possible if the two were able to cooperate. Game theorists believe that rational individuals have no means to circumvent this mutually-impoverishing outcome, unless external penalties are introduced to induce each to cooperate.

The shift to a game theoretic universe of economic and political competition defines a rupture from classic and neoclassical economics of unproblematic and voluntary exchange within the context of a system of justice as stipulated by Adam Smith and Immanuel Kant. Michel Foucault’s work on modern governmentality tightly intersects with this narrative because the efficiency supposedly characterizing market interactions bears a conceptual resemblance to mechanical efficiency. Allocating scarce resources efficiently was the automatic

¹¹ Duncan Luce and Howard Raiffa, *Game and Decisions* (New York: Wiley, 1957), 95. Mathematicians Merrill Flood and Melvin Dresher invented the game; for discussion see William Poundstone, *Prisoner’s Dilemma: John von Neumann, Game Theory, and the Puzzle of the Bomb* (New York: Doubleday, 1992).

coordinating principle of modern economics and modern governmentality. Government ruled as a set of disciplinary tactics dedicated to establishing and maintaining norms of conduct in accordance with a central theme of social welfare.¹² The rule of law was justified because it served individuals' interests, and it was obeyed because individuals preferred to live in a law-governed state rather than in a chaotic state of nature.

As we turn the corner from neoclassical economics as voluntary, mutually-beneficial exchange presupposing the role of government in sanctifying the legal integrity of property rights, to the late twentieth-century coalescence of governing all transactions via incentives, the Prisoner's Dilemma becomes the Rosetta Stone for comprehending human interrelations. This transition is the most evident in contrasting Friedrich Hayek's description of trade as occurring between two primitive tribes who find that by leaving surplus goods on their boundary, others naturally reciprocate, with the new view that any and all exchange is subject to the Prisoner's Dilemma. By the latter account, in any exchange transaction, each party has the incentive to cheat the other party, thereby achieving a "mutual defection" instead of a "mutual cooperation" outcome. Trade itself, because individuals are incapable of forming binding agreements by consent, must be encased within government threatening sanctions to ensure that no one selects to cheat the other. This leads to a great irony: if we are to have a minimal state in which the unfettered market thrives, then that state needs to be able to at least monitor (not regulate) that market. At the same time that the "public" was eroded as a meaningful corporate body, so privacy has become eviscerated of specific content.

Solving the Prisoner's Dilemmas abounding throughout society requires pervasive inspections of individuals' activities. Employees' phone conversations are routinely recorded; trucks are marked: "How's my driving, call 1-800-555-1212 to report." No one is trusted to do her job as it is assumed all will cut any corner they can get away with.

Despite the strangeness of this notion, the idea of the Prisoner's Dilemma has been discussed as though its form of governmentality

¹² Michel Foucault, *Discipline and Punish: The Birth of the Prison*, (New York: Random House, 1979), 135-69.

is co-extensive with all of human history.¹³ The problem of achieving social order out of anarchy has been and will always be, so the story goes, a Prisoner's Dilemma. Therefore, it is not surprising that in the rational choice appropriation of canonical political theory, Thomas Hobbes' *Leviathan* is the favorite point of departure; it is maintained that all exchange is subject to a Prisoner's Dilemma and that the solution to the problem of social order must be that of government via sanctions to prevent, or punish if necessary, defection in transactions ranging from one-off exchanges to more complex multi-party interactions. The claim then can be put forward that the Buchanan's fascination with a maximal security state was anticipated by the seventeenth-century Hobbes, who astutely understood the impossible Prisoner's Dilemma bind we all find ourselves in when we attempt to cooperate with each other. This account, of course, is readily sounded in his choice of a subtitle to *Limits of Liberty: Between Anarchy and Leviathan*.

The rational choice fixation on the Prisoner's Dilemma and its resolution with a *Leviathan*-like state may give us pause to begin with, but as long as it seems like a strand of an earlier form of argumentation already bequeathed to us by Hobbes and amended by Smith as well as by Kant, this does not seem so significant or problematic by itself. However, once we realize that even Hobbes spoke of rights, duty, consent, and mutual forbearance, we can make a case that Hobbes' analysis of the problem of social order, and that of neoliberalism, are not equivalent.¹⁴ Indeed, as game theorists themselves seem aware, the new mode of governmentality predicated on the inmate's dilemma requires a maximal and not a minimal security state:

While Hobbes thought that the authority of the State should be absolute so as to discourage any cheating on "peace," he also thought the scope of its interventions in this regard would be quite minimal. In contrast much of the modern fascination with

¹³ See, for example, Ken Binmore's *Natural Justice* (New York: Oxford University Press, 2005). Note that Binmore focuses on the repeated Prisoner's Dilemma, which is solved by each individual personally threatening the other with defection in future rounds of play.

¹⁴ For an insightful discussion, see Edward F. McClennen, "The Tragedy of National Sovereignty," in *Nuclear Weapons and the Future of Humanity*, ed. Avner Cohen and Steven Lee (Totowa, NJ: Rowman and Allanheld, 1986), 391-406.

the *Prisoner's Dilemma* stems from the fact that it seems such a ubiquitous feature of social life. For instance, it lies plausibly at the heart of many problems which groups of individuals (for instance, the household, a class, or a nation) encounter when they attempt a collective action. . . . This is important for Liberal political theory because it seems to suggest that the State . . . will be called upon to police a considerable number of social interactions in order to avoid the sub-optimal outcomes associated with this type of interaction.¹⁵

These game theorists are fully aware that somewhere between the absolutism of Hobbes and latter-day rational choice theory, we have made a transition from providing minimal security to policing virtually all transactions. The authors concur that in a game theoretic world typified by the Prisoner's Dilemma, "the boundaries of the State . . . will be drawn quite widely."¹⁶ This pervasive state is conceptually linked to *laissez faire* capitalism, as no voluntary barter is deemed safe without a punitive guarantor. As well, this transition directly relies on the Prisoner's Dilemma for its rationale of intrusive governmentality. Individuals themselves are incentivized to actively participate. Thus, a private company in the airport security industry is licensed to give priority to passengers who pay for their service of personal identification through fingerprinting or iris scanning.¹⁷

Buchanan's Prisoner's Dilemma-based analysis to the problem of social order in *Limits of Liberty* precisely demarcates the moment of adoption of this new logic of governmentality. Conveniently, it is over this point that Buchanan and public choice, not to mention much rational choice scholarship, diverge from John Rawls' approach to justice and good governance. The point of schism is that of Buchanan's proposal that government and law is inseparable from incentives and sanctions on the one hand, and, on the other, Rawls' view that mutual consent and mutual forbearance are a mandatory basis for maintaining a civil society. This point of division is not just that between Buchanan and Rawls, but it is indicative of a much greater disagreement regard-

¹⁵ Hargreaves Heap and Varoufakis (2004), 175.

¹⁶ Ibid.

¹⁷ Flyer from "Flyclear.com" picked up at Washington Dulles International Airport.

ing the bases of civil society: the neo-liberal practice of government relies on the Prisoner's Dilemma assessment of the problem of social order that is mutually exclusive of legitimacy through consent. In traditional democratic theory, law is bequeathed its legitimacy from due process entailing the participatory deliberation of its citizens. However, once one accedes to the central applicability of the Prisoner's Dilemma to analyze many human interactions, and once one accepts that it provides an ahistoric analysis of human governmentality, then there is not much left to debate.

Another way to review this argument is to compare John Rawls' *Theory of Justice* (1971) with James Buchanan's *Limits of Liberty*. It is a relevant fact that even though Rawls wrote his *Theory of Justice* to be wholly consistent with the underlying premises of rational choice theory, in 1985 he split with rational choice-informed philosophers and social scientists over the reasonableness of "fair play." As is well-known in game theory, it is a standard formulation of rational action that each individual will cheat whenever the calculable consequences are superior to the costs of compliance.¹⁸ It is accepted across the board by game theorists that the concept of "fair play," or upholding a set of behavioral standards one personally consented to, carries no weight in a decision-theoretic calculation. Rawls, at this juncture exhibiting what to some appeared to be a Kantian influence, broke with the rationality program to advocate a notion of the "reasonable" in contradistinction to the "rational."¹⁹ One way to view this difference hinges on whether an agent will adhere to law as a matter of voluntary obligation in accordance to agreeing with its rationale, or whether the agent solely upholds law out of fear of sanctions.²⁰

Of course, the means by which law may be said to be conditioned by "right," and not solely by "might," has been a central problem of western political philosophy at least since Hobbes' *Leviathan*, which some commentators take to imply "the subjugation of individual men to a sovereign master, with the latter empowered to en-

¹⁸ Gregory Kavka, "The Toxin Puzzle," *Analysis* 43, no.1 (1983): 33.

¹⁹ John Rawls, "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14, no. 1 (1985): 223-51.

²⁰ For further discussion see Joseph Heath, *Communicative Action and Rational Choice* (London: MIT Press, 2001), esp. 129-72.

force 'law' as he sees fit."²¹ Neo-liberalism, in some form advocated by Buchanan, reaches a new adjudication of the problem of social order adopting total adherence to rational egoism that has been defined to exclude a consent-based approach to political legitimacy. As Buchanan acknowledges in identifying our current moment of civilization as post-constitutional, in which individual alienation and disaffection from state-prescribed laws is the norm, "Once this stage is reached, the individual abides by existing law only because he is personally deterred by the probability of detection and subsequent punishment."²² Thus, even if American law had the semblance of legitimacy in the late eighteenth century, it is harder for many today to either be so sanguine, or to marshal an argument for a practical return to semi-transparent legitimacy given our distance to the constitutional moment.

Buchanan acknowledges that he and Rawls share their concerns with this predicament, and although their analyses are similar, they each reach a different position on governance. In brief, Buchanan believes that the social anarchy of the American 1960s and 1970s was a function of the lack of will to enforce rights through punishment. On the other hand, Rawls concludes that "[e]nforcement may not be possible unless the prevailing distribution meets norms of justice . . . notably those summarized in the difference principle."²³ For Rawls, individuals' compliance to social law is not maintained by force, but rather through hypothetical consent to the terms of government. This hypothetical consent, which serves to acknowledge that most of us do not actually agree to the rules that govern us, must at least be conceivable in principle for one's government to have a degree of legitimacy, and thus a display of "right" over merely "might." In the rational choice world, there is no test to differentiate between valid and invalid law, because individuals will seek to break the law when it serves their private interest in any and all cases.

This assumption that everyone is a cheater is a sly means of eradicating the distinction between the concerns of efficient use of resources to generate wealth, and the distribution of resources.

²¹ Buchanan (1975), 130.

²² *Ibid.*, 96.

²³ James M. Buchanan, "A Hobbesian Interpretation of the Rawlsian Difference Principle," *Kyklos* 29 (1976): 23.

Here two recognizable forms of criminality are conflated: a form of criminality that is encouraged by lack of inclusion within the social contract, and a form of criminality that preys on the social contract, even though the individual in question is already well-poised to gain fruits from the social contract. The distinction may be illustrated by contrasting the Enron executive with the homeless person who shoplifts motivated by hunger. In the first case an individual cheats despite the rule of law required to produce fruit in the first place; in the second case, an individual cheats because there is insufficient fruit to be gained by upholding the rule of law. Early modern political philosophers were keen to draw this distinction. Locke was the clearest and Hobbes not far behind: when an individual's self-preservation is at stake, the rule of nature prevails over the rule of law regardless of whether or not one is in a civil society.

The Prisoner's dilemma is definitive of neo-liberalism and captures its central paradox: if free trade is so obviously in each individual's interest, then why the need for police, enforcement, and sanctions? It makes more sense to expect a system that is so obviously in each person's interest to be sufficiently self-enforcing so as not to require microscopic policing. To restate my position, neo-liberalism is coextensive with the Prisoner's Dilemma rationale for governance; the same central paradox governs both systems. We are familiar with the "ruthless logic" of the Prisoner's Dilemma: each can see that "cooperate-cooperate" is a better individual and collective outcome than "defect-defect," but each of us has the ever-present incentive to cheat in pursuit of unilateral, if benighted, success. Therefore, given that we are all cheaters by the mere fact that we are rational actors, the only means by which we can achieve mutual cooperation is via the imposition of sanctions on all transactions. This resolution of the problem of social order is obviously at least as paradoxical as Jean Jacques Rousseau's observation that we must be "forced to be free": the role of government is to guarantee by force that populations of individuals can achieve the "Pareto optimal" cooperate-cooperate result. Throughout this analysis, agreement to the terms of trade or governance is irrelevant. As long as the terms are better than those achieved by mutual defection, any arrangement of provisions may be enforced.

In the hands of Buchanan, the Prisoner's Dilemma analysis of social order grows in mytho-poetic proportions. In developing

his Hobbesian-like narrative, Buchanan deviates from Hobbes, and other Enlightenment-era thinkers, holding that humans are naturally unequal, and that even prior to the establishment of civil society, a status quo inegalitarian distribution will result because some are more capable, talented, and strong. Notwithstanding this disparity in status quo allocation based on objectively observable merit, trade occurs, supposedly under the traditional neoclassical logic that Pareto optimality will result no matter what the initial endowment of goods. To quote Buchanan:

The gains from trade that are potentially achievable by an agreement on rights are realized by all parties through the disinvestment in socially wasteful effort devoted to both predatory and defense activity. An agreed-on assignment will not normally be stable in one particular sense.²⁴

However, notwithstanding the self-evident quality of exchange to achieve mutual gain, Buchanan observes that "Once reached, one or all parties may find it advantageous to renege on or to violate the terms of contract."²⁵ Essentially, according to Buchanan, even though it is obvious that mutual cooperation (even given inegalitarian original distribution) is superior, still each has the ever-present incentive to rob the other.

To make clear that this "state of nature" problem is that of the Prisoner's Dilemma, Buchanan continues,

Within the setting of an agreed-on assignment of rights, the participants in social interaction find themselves in a genuine dilemma, familiarized under the "prisoners' dilemma" rubric in modern game theory. All persons will find their utility increased if all abide by the "law," as established. But for each person, there will be an advantage in breaking the law, in failing to respect the behavioral limits laid down in the contract.²⁶

To make headway with Buchanan's formulation of the problem

²⁴ Buchanan, 26.

²⁵ Ibid.

²⁶ Ibid.

of social order, it is necessary to be fully aware of the differences between his analysis and Hobbes'. For Buchanan, as for libertarian philosopher Robert Nozick, rights are prior to civil society, and they therefore provide the point of origin for a "naturally just" initial distribution.²⁷ The role of the state is only to objectively referee transactions as a matter of protection, and not to adjudicate matters of distribution.²⁸

All of this sounds uncannily like classic political economy with its night-watchman state. The analysis, in fact, is developed to resemble traditional liberalism. However, it departs from classic political economy in its inability to locate a normative pole external to the central logic of rational self-interest. It is true that both Adam Smith and Immanuel Kant advocated a minimal security state. However, for both these philosophers, justice has normative purchase external to rational self-interest. For Smith the basis of justice resides in non-utilitarian sympathy; for Kant the basis for justice resides in transcendental practical reason.²⁹ Buchanan himself acknowledges that the basic premises upon which public choice theory is built makes it impossible to locate any source of normativity for so basic a concept of mutual respect, or for treating individuals as ends and not solely as means.³⁰ The Prisoner's Dilemma, and its premise of ubiquitous cheating in the absence of sanctions, appears to be the dual result of accepting some version of moral relativism and realism about human nature. As is typical for rational choice theorists, the suggestion that individuals could be motivated by a sense of duty, or of mutual forbearance, or of compliance with one's word, evokes the ready rejoinder, "that's so naive!" Buchanan is clear that his political philosophy is one that embraces a community of devils, and does

²⁷ Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Basil Blackwell, 1974), 8-11; 23-26.

²⁸ Ibid., 95.

²⁹ For the normative basis of Smith's system of justice, see S.M. Amadae, *Rationalizing Capitalist Democracy* (Chicago: University of Chicago Press, 2003), 193-219; see S.M. Amadae, "Impartiality, Utility, and Induction in Adam Smith's Jurisprudence," *Adam Smith Review* 4 (2008); see also Immanuel Kant's *Metaphysical Elements of Justice*, 2nd ed., trans. John Ladd (1797; Indianapolis: Hackett Publishing Company, 1999).

³⁰ Amadae, *Rationalizing Capitalist Democracy*, 151-2.

not optimistically assert or require a community of angels.³¹

The rational choice insistence on not assuming that individuals bring any type of moral qualities to decision-making is what resulted in John Rawls' break with both rational choice theory and his earlier claim in *Theory of Justice* that justice is the most important aspect of a theory of rational choice. Subsequently, Rawls proposed the idea of "the reasonable" that pivots on the concept of fair play: "if the participants in a practice accept its rules as fair, and so have no complaint to lodge against it, there arises a prima facie duty . . . of the parties to each other to act in accordance with the practice when it falls upon them to comply."³² In Rawls' post-1985 assessment, it is reasonable to be committed to rules of conduct that one consented to, despite the fact that one's personal payoffs for doing so in each and every instance may not calculably be to one's advantage. At this juncture, rational choice theorists ceased being interested in what they took to be Rawls' self-professed Kantianism and its attendant idealism. Instead, they upheld their canonical assertion that defection, when it is demonstrably in one's interest, is always the rationally sanctioned norm.

The assumption that we are all naturally born cheaters, which requires notions of consent, duty or legitimacy to be irrational, serves a particular function in neo-liberal governmentality³³: it permits the conflation of forms of crime that prey on the legally sanctioned system and forms of crime that exist despite the system. Public Choice theorists, Buchanan included, are of course savvy about calculating each individual's rewards for acting in one way versus another. Therefore, it is a first principle in Buchanan's assessment that each individual benefits from participating in a civil society *regardless of distributional concerns*. His dedication to this assumption is manifest in his quasi-inter personally comparable rendition of the Prisoner's

³¹ Buchanan's position is already evident in *Calculus of Consent*.

³² John Rawls, "Justice as Fairness," in *John Rawls: Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard University Press, 1999), 60.

³³ For discussion, see Anatol Rapoport's early book co-authored with Albert M. Chamamah, *Prisoner's Dilemma: A Study in Conflict and Cooperation* (Ann Arbor: University of Michigan Press, 1965); see also Martin Hollis, *Trust within Reason* (Cambridge: Cambridge University Press, 1998).

Dilemma at the heart of the social contract.³⁴ No matter how small one's share is, mutual cooperation is superior to mutual defection. Similarly, and this is key, no matter what one's share is *it is in each individual's equal interest to defect*. Buchanan clearly articulates this point: "Once reached, one or all parties may find it advantageous to renege on or to violate the terms of contract. This applies to *any* assignment [of goods] that might be made."³⁵ Accepting the ubiquity and rationality of defection is so important that Buchanan clarifies: "the tendency toward individual violation is not characteristic of only some subset of possible agreements."³⁶ In other words, it is a crucial starting point for rationalizing neo-liberal governance that no matter what the distribution of rights, all are alike in their motives to cooperate or to defect from that system of rights. Within this narrative, there is no categorical distinction between the poor individual with few legitimate opportunities and the wealthy banker: each alike has the ever-present incentive to cheat the system; each alike finds mutual cooperation to be superior to mutual defection.

The focus of Buchanan's discussion in *Limits of Liberty*, and his "A Hobbesian Interpretation of the Rawlsian Difference Principle" (1976) is on the social disruption caused by rule-breakers. In the latter article, he observes, "Honest assessment of life about us should suggest that there has been an erosion in the structure of legal order, in the acknowledged rights of persons, and that, indeed, modern society has come to be more and more vulnerable to disruption and the threat of disruption."³⁷ Buchanan finds that Rawls' difference principle, that strives to guarantee that all society's institutions which are structured in accordance with egalitarian distribution of resources must provide some benefit to society's least advantaged members, is an attempt by Rawls to ensure that pockets of disaffected individuals do not arise. Therefore, the difference principle is read by Buchanan as being Hobbesian, because it strategically aids in securing social order by staving off disaffection.

However, ultimately, Buchanan recognizes that Rawls' solution is different from his own, because it assumes that compliance with

³⁴ Buchanan, 27.

³⁵ Buchanan, 26.

³⁶ Ibid.

³⁷ Buchanan, 21.

the system can be maintained through inclusion and through sharing the spoils of mutual cooperation. Buchanan is quite open in the different conclusions he and Rawls reach: "Parts of . . . [Rawls'] argument may be read to suggest that individuals *should not* abide by the distribution of rights assigned in the existing legal order unless this distribution conforms to the norms for justice. And persons in the original position *should not* agree on a set of social arrangements that are predicted to place strains on individual norms of adherence and support."³⁸ For Rawls' compliance and the duty to comply is wedded to one's sense of commitment to the social system; complicity in society demonstrates allegiance to its overriding principles.

Buchanan, however, reaches the Machiavellian conclusion that:

The difference principle can be identified as emerging from contractual agreement in the initial position only if the participants make the positive prediction that least-advantaged persons and/or groups will, in fact, withdraw their cooperation in certain situations and that the threat of this withdrawal will be effective.³⁹

Thus Buchanan unequivocally differs from Rawls in his assertion that in order to maintain social order, enforcement is all that is necessary. Buying-in potentially disaffected parties via adherence to the difference principle is necessary only when enforcement fails. In his view, the potential gains of mutual cooperation, despite disparate distribution, should be sufficient to secure cooperation, when sanctions are used for enforce contracts. He writes,

My own efforts have been directed toward the prospects that general attitudes might be shifted so that all persons and groups come to recognize the mutual advantages to be secured from a renewed consensual agreement on rights and from effective enforcement of these rights. Rawls may be, in one sense, more pessimistic about the prospects for social stability. [For Rawls,] enforcement may not be possible unless the prevailing distribution meets norms of justice, and notably those summarized in the difference principle.⁴⁰

³⁸ Buchanan, 23.

³⁹ Ibid.

⁴⁰ Ibid.

Buchanan decisively concludes, "Whereas I might look upon the breakdown of legal enforcement institutions in terms of a loss of political will, Rawls might look on the same set of facts as a demonstration that the precepts of a just society are not present."⁴¹ Whereas Rawls argues that consent and duty are necessary to maintaining political stability via an ongoing process of inclusion guaranteed by the difference principle, Buchanan looks to force to maintain law and social order without considerations of the distribution of individuals' entitlements.

What is missing from the neo-liberal view of governance is the crucial role that agreement to terms has traditionally played in legitimizing both free-trade and democratic government. It is well-known that Enlightenment liberalism did not encourage the state to play a role in redistributing resources. However, classic liberalism did rest on the firm assumption that in any contract setting, individuals' consent to the terms of the agreement provides a rationale for their ensuing compliance with the contract. In neo-liberalism, agreement does not play a role in motivating action. Therefore, the content of terms, apart from as generated by the respective bargaining power of the participants, is immaterial. In fact, virtually any terms may be enforced with sufficient force or "political will."

One can appreciate the hope to study the interactions of self-interested agents, without assuming that they have concern for each other, as contemporary societies largely operate on faceless interactions. The Prisoner's Dilemma construed as a multi-party problem seems well-suited to describe large joint actions in which it appears gratuitous to suggest that each acts to further others' interests, as well as his own. However, the stakes in this debate are high. According to one view of the individual and society, each of us acts to maximize expected utility regardless of the effects on others. Law steps in as a "public good" that realizes prospects for joint gain when myopic self-interest would otherwise leave everyone worse off; law motivates by imposing penalties on would-be cheaters. According to Gary Becker and Richard Posner, who work within this rational choice tradition, the purpose of law and justice is to make social interactions efficient such that they generate the most wealth, regard-

⁴¹ Ibid.

less of how that wealth is distributed.⁴² Agreement to terms carries no weight, as was evident in the unprecedented 2004 United States Supreme ruling in *Kelo vs. City of New London*, which mandated that private property may be seized not just for public use, but also for private ownership and use, if the recipient is able to make better economic use of it; the US Federal Government allows that “private property is forcibly relinquished to new private use.”⁴³ The content of law can be determined by performing cost-benefit analyses of how to best satisfy individuals’ preferences. Wealthy individuals, who have proven their value to society by meriting high-paying jobs, have a higher economic value and have justifiably higher compensation packages.⁴⁴ Deliberation is superfluous to this public policy process as it may only serve to be a potentially inflammatory distraction.

In the supergame of life, there is no necessity to live, but there is a subjectively felt necessity to live well. According to the rational choice view, “living well” means maximizing expected utility by making consistent decisions throughout one’s lifetime. Supposedly, rational choice can encompass any conception of “the good life.” According to the alternative view championed by critical and deliberative democratic theorists, living well entails realizing one’s goals in the company of others. An agent’s relation to herself is predicated on internal dialogue, just as are relations to others. Deliberation punctuates one’s inner psyche, especially in reaching decisions, just as it regulates human activities.⁴⁵ Understanding of one’s own identity, and its inter-

⁴² Gary Becker, *The Economic Approach to Human Behavior* (Chicago: University of Chicago Press, 1976); Richard Posner, “The Law and Economics Movement,” *American Economic Review* 77 (1987): 1-13; and “Wealth Maximization and Judicial Decision-Making,” *International Review of Law and Economics* 4 (1984): 131-5.

⁴³ See opinion of Supreme Court of the United States, October Term, 2004; quote is from J. O’Connor, dissenting, p. 10; see also p. 8. Available at www4.law.cornell.edu/supct/pdf/04-108P.ZD.

⁴⁴ As a practical example of the logical conclusion of this reasoning, consider the World Trade Center Victim Compensation Fund that unprecedentedly allocated resources according to expected earnings potential. See Elizabeth Kolbert, “How Kenneth Feinberg Determines the Value of Three Thousand Lives,” *The New Yorker*, Nov. 25, 2002.

⁴⁵ See Jürgen Habermas on the relationship between internal dialogue and intersubjective communication, “The Paradigm Shift in Mead and Durkheim: From Purposive Activity to Communicative Action,” in *The Theory of Communicative Action*, vol. 2, trans. Thomas McCarthy (Boston: Beacon Press, 1987), 1-112. See also Margaret

dependence with historical facts, present circumstances, and others’ presence, is crucial to having goals and pursuing them rationally.

Whereas the rational choice perspective insists that it is consistent with any and all facets of deliberative democracy and active citizenry, we must acknowledge that the two traditions reach abruptly distinct appraisals of law. For the deliberativist, understanding the law, and voluntarily consenting to its validity, at least in principle, provides a rationale for following the law and is therefore behaviorally motivating. Similarly, agreeing to the terms of an exchange is tantamount to committing oneself to carry them out, even if it were feasible to stab the other in the back upon leaving the bargaining table. Given that consent to the terms of a rule or bargain has grounded the twin Enlightenment era traditions of democratic government and the free market, it seems that undermining its cogency as a social practice would signal that classic liberalism has more in common with deliberation than with a rational computation of personal interests constrained only by one’s ability to dominate outcomes.

Both classic liberalism and neo-liberalism are dedicated to a view of the state whose role should be that of providing a framework for individuals to pursue their self-construed life plans. However, classic liberalism provides two avenues to prevent self-interested individuals from simply asserting their will over others to whatever extent is feasible given reigning power relations. On the one hand, classic liberalism recognizes the fundamental interdependence and mutuality of citizens, and therefore mandates that a condition for the pursuit of one’s livelihood is that of respecting others’ like claims. On the other hand, the content of law, if it is to be just and not whimsical, must be understandable as a guide to action that makes sense to those whom it governs. “Making sense” connotes conveying a motivation for action that may be at odds with personal expected utility calculations: “It makes sense to stop at red traffic lights because overall in our nation traffic accidents will be lowered by everyone following this rule, even though I am tempted to run red lights in order to get to work on time.” The Prisoner’s Dilemma logic recommends to the contrary that rational individuals stop at red lights because they calculate the cost of getting a traffic citation, or of getting in an accident, against

Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society* (Oxford: Clarendon Press, 2006).

the cost of running several minutes behind.⁴⁶

Interestingly, Rawls himself came to see the limits of his earlier ideas and wrote in 1985 that “it was an error in *Theory* (and a very misleading one) to describe a theory of justice as part of a theory of rational choice.”⁴⁷ By the time we get to his Idea of Public Reason in the late-90s, he is explicit about his general acceptance of deliberative democracy: “I am concerned only with a well-ordered constitutional democracy . . . understood also as a deliberative democracy.”⁴⁸ The other essays in this volume will advance the idea that democratic government is predicated on participatory deliberation and voluntary consent manifested in appropriate collective decision-making procedures, rather than merely an amalgamation of individuals’ private preferences over state of affairs.

⁴⁶ This philosophy is articulated in Gary Becker, *The Economic Approach to Human Behavior* (Chicago: University of Chicago Press, 1978).

⁴⁷ Rawls “Justice and Fairness: Political, not Metaphysical,” *Philosophy and Public Affairs* 14, no. 3 (summer 1985): 223-51 and see Amadae (2003), 270-273.

⁴⁸ Rawls, “The Idea of Public Reason Revisited,” first published in 1997 and contained in *The Law of Peoples with “The Idea of Public Reason Revisited”* Harvard University Press, 1999. Gutmann and Thompson appraise the kind of deliberation that Rawls has in mind when he characterizes himself as a deliberative democrat. “In his later writings Rawls moves significantly further toward deliberative democracy . . .” but he “says little about the role of actual deliberation in non-ideal conditions” *Democracy and Disagreement* (38-39).

BIBLIOGRAPHY

- “A Question of Justice?: The Toll of Global Poverty is a Scandal. But Deploing Economic ‘Injustice’ is No Answer.” *The Economist*, March 13, 2004.
- Amadae, S.M. “Impartiality, Utility, and Induction in Adam Smith’s Jurisprudence.” *Adam Smith Review* 4 (2008).
- . *Rationalizing Capitalist Democracy*. Chicago: Chicago University Press, 2003.
- Becker, Gary. *The Economic Approach to Human Behavior*. Chicago: University of Chicago Press, 1976.
- Binmore, Ken. *Natural Justice*. New York: Oxford University Press, 2005.
- Bourdieu, Pierre. *Acts of Resistance: Against the Tyranny of the Market*, translated by Richard Nice. Oxford: Polity Press, 1998.
- Buchanan, James M. “A Hobbesian Interpretation of the Rawlsian Difference Principle.” *Kyklos* 29 (1976): 23.
- , and Gordon Tulluck. *The Calculus of Consent*. Ann Arbor: University of Michigan Press, 1962.
- . *Limits of Liberty*. Indianapolis: Liberty Fund, Inc., 1975.
- Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. New York: Random House, 1979.
- Gilbert, Margaret. *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*. Oxford: Clarendon Press, 2006.
- Gutmann, Amy and Dennis Thompson. *Democracy and Disagreement*. Cambridge: Harvard University Press, 1996.
- Habermas, Jürgen. “The Paradigm Shift in Mead and Durkheim: From Purposive Activity to Communicative Action.” In *The Theory of Communicative Action*, vol. 2, translated by Thomas McCarthy. Boston: Beacon Press, 1987.
- Hargreaves Heap, Shaun P., and Yanis Varoufakis. *Game Theory: A Critical Text*, 2nd ed. London: Routledge, 2004.
- Hausman, Daniel M., and Michael S. McPherson. “Economics, Rationality, and Ethics.” *The Philosophy of Economics: an Anthology*, 2nd ed., edited by Daniel M. Hausman. Cambridge: Cambridge University Press, 1993.
- Heath, Joseph. *Communicative Action and Rational Choice*. London: MIT Press, 2001.
- Hollis, Martin. *Trust within Reason*. Cambridge: Cambridge University Press, 1998.
- “I Want Your Money.” *The Economist*, Sept. 27, 2008.
- Kant, Immanuel. *Metaphysical Elements of Justice*, 2nd ed., translated by John Ladd. 1797; Indianapolis: Hackett Publishing Company, 1999.

- Kavka, Gregory. "The Toxin Puzzle." *Analysis* 43, no. 1 (1983): 33.
- Kolbert, Elizabeth. "How Kenneth Feinberg Determines the Value of Three Thousand Lives." *The New Yorker*, Nov. 25, 2002.
- Luce, Duncan, and Howard Raiffa. *Game and Decisions*. New York: Wiley, 1957.
- McClellenn, Edward F. "The Tragedy of National Sovereignty." In *Nuclear Weapons and the Future of Humanity*, ed. Avner Cohen and Steven Lee. Totowa, NJ: Rowman and Allanheld, 1986.
- Nozick, Robert. *Anarchy, State, and Utopia*. Oxford: Basil Blackwell, 1974.
- Posner, Richard. "The Law and Economics Movement." *American Economic Review* 77 (1987).
- . "Wealth Maximization and Judicial Decision-Making." *International Review of Law and Economics* 4 (1984).
- Poundstone, William. *Prisoner's Dilemma: John von Neumann, Game Theory, and the Puzzle of the Bomb*. New York: Doubleday, 1992.
- Rapoport, Anatol and Albert M. Chammah. *Prisoner's Dilemma: A Study in Conflict and Cooperation*. Ann Arbor: University of Michigan Press, 1965.
- Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.
- . "Justice as Fairness." In *John Rawls: Collected Papers*, ed. Samuel Freeman. Cambridge: Harvard University Press, 1999.
- . "Justice as Fairness: Political Not Metaphysical." *Philosophy and Public Affairs* 14, no. 1 (1985).
- Rector, Robert and Rea Hederman, Jr. "Two Americas: One Rich, One Poor; Understanding Income Inequality in the US." *The Heritage Foundation*, Aug. 24, 2004. Sanders, Bernie. Op-Ed, Sept. 19, 2008. www.sanders.senate.gov/news/record.cfm?id=303313.
- Shapiro, Stewart. *Thinking About Mathematics*. Oxford: Oxford University Press, 2000.
- Wittgenstein, Ludwig. *Remarks on the Foundations of Mathematics*, edited by G. H. von Wright, R. Rhees, and G.E.M. Anscombe, translated by G.E.M. Anscombe. Cambridge: MIT Press, 1996.
- "Workingman's Blues." *The Economist*, July 24, 2008.
- "World on the Edge." *The Economist*, Oct. 4, 2008.
- Wright, Crispin. *Wittgenstein on the Foundations of Mathematics*. Cambridge: Harvard University Press, 1980.

CHAPTER 2

From Citizen to Consumer and Back Again: Deliberative Democracy and the Challenge of Interdependence¹

Benjamin Barber

Democracy's history unfolds in stages and reveals that, in fact, we really shouldn't talk about the history of *democracy*, but about *democracies* in the plural. There is no such thing as democracy: one model, one place, one time, one country. Instead, when we look across time, across cultures and across frontiers, we see that democracy describes a variety of systems that have something in common but in many ways are deeply differentiated one from the other. So we really need to think about democracy in the plural rather than the singular. When we do that and go back to the origins of democracy, at least in the West, we go back to our foundational courses in liberal arts and philosophy and political theory, to the ancient Greeks. There it is evident that democracy starts as a regime of public life in a self-governing entity known as the *polis*. Democracy was born in a place that was characterized by very modest dimensions, both geographically and in terms of numbers of people, by a relatively homogenous population that spoke a single language, shared common beliefs, had a common history and common values.

Much of the value conflict we face in our society today was foreign to early democracy because, in fact, it was assumed that democracy would only work in a place with homogenous, consistent values, where people shared the same religion, the same ethnicity. In ancient Greece, people who did not share such values and ethnicity were regarded as "barbarians," as outsiders, not just to the Greek way of life but, as Aristotle had suggested, to some extent to the human way of life. In short, democracy was born as a form of self-

¹ Adapted from my Keynote Address, "The Decline of Capitalism and the Infantalist Ethos" (Carnegie Mellon University, September 21, 2006).