**The Reason for ‘The Reason of Rules’**

*The* *Reason of Rules* was a temporal sequel – though in logical terms, really a prequel – to *The Power to Tax*. Research is often like that. One can work upstream to more foundational issues as well as downstream to applications or logical implications. The development of the *Reason* from the *Power* was an upstream move.

In the months following the publication of *The Power to Tax*, Jim and I – both jointly and severally – had been drawn into a series of expositions and defences of the basic argument contained in that book. Perhaps unsurprisingly, what we found, especially within public finance orthodoxy, was a decided lack of sympathy with the enterprise – and specifically with the “approach” to government action on which the whole exercise was based. The claim – not perhaps entirely without justification – was that the putative ‘model’ of government embodied in the *Power to Tax* was a total caricature and hence that a tax theory based on that model was not worth taking seriously. In one way, I guess, one important purpose had been served --because many public finance people became focused (for the first time really) on the issue public choice held to be critical – namely, the importance of the underlying model of politics!

In this sense, our response must have been a bit disappointing to the critics. We were simply inclined to concede the point – at least, to concede it this far: that any satisfactory normative theory of taxation has to be based on a plausible account of the political processes of which tax policy is both an outcome and an essential element. In one way, that particular message was the central one in the whole public choice endeavour – and if *The Power to Tax* served to establish that message in the heartland of public finance orthodoxy, then an important task had been accomplished. Certainly, what we were not prepared to concede was that the approach to politics in the *Power to Tax* was any more of a caricature than the “benevolent despot” model that inhabited standard tax reform advocacy.

Remember that in those early days, whatever the prevailing attitudes were about what public choice theory was *for*, everyone was clear enough about what it was that public choice was *against.* The benevolent despot account of government was the thing we public choice folk “loved to hate”!

And one of the important reasons we disapproved of the BD account lay in the striking divergence between motivations ascribed to policy-*makers* and to policy-*takers*. The latter were modelled in simple *homo economicus* terms; the former were modelled as motivated exclusively by a desire to promote goodness, as the public finance/welfare economics framework defined it. Bit odd, that, we thought.

The simple manoeuvre in the *Power to Tax* was to dissolve this divergence. We replaced the benevolent despot picture with a non-benevolent despot alternative -- not an especially malevolent despot, just a rational maximiser in the spirit of the familiar *homo economicus* construction. Our question was whether the standard nostroms of tax policy would survive this simple transformation. [They didn’t, but that’s another story.]

In that sense, our ambition in *The Power* had *not* been to produce a general model of democratic political process for policy analysis purposes; rather it had been to provide a kind of morality tale about how sensitive policy recommendations might turn out to be to changes in basic political assumptions.

But caricatures apart, *The Power* represented an application of the general kind of ‘principal/agent’ approach to political analysis and policy reasoning that public choice theory had long been advocating. If government action was to be seen as having presumptively desirable effects, that was something that had to be *proven* – not *assumed.* And the point of departure in that exercise ought to be, we thought, the *homo economicus* assumption – not, as John Stuart Mill put it, because that “*always is so, but because such is the natural tendency of things, to guard against which is the especial use of free institutions*.”

Here is a good opportunity to emphasize a point on which I think there has been serious confusion in much of the critical literature (critical, I mean, of ‘public choice’). The confusion is nicely captured in the title of a paper by Mark Kelman [*Virginia Law Review* (1984)]in which public choice theory is described as “democracy bashing”. That description seems to me to be decidedly inappropriate – but it’s an instructive mistake, and hence important not just to dismiss it. Surely, the true enemies of democracy are those who take it as a matter of course that the agents who produce policy will routinely act in the public interest – in the absence of any incentives at all to do so. If benevolent despot thinking is adopted, then the constraints embodied in democratic electoral requirements can only serve to prevent benign policy-makers from doing the good they would otherwise do! Given that view, the thing we ought to be aiming at is to *diminish* the role of electoral constraints – to move towards less democracy, not more! Or less effective democracy! It is the benevolent despot approach that is democracy-bashing in its implications, not the public choice alternative!

We public choice theorists are, in this sense, presumptive democrats. We locate the domain of their normative analysis in *The Reason of Rules* – the institutions of the political game – and aim to discover, among other things, what form of democratic arrangements, what rules for determining the policies that will govern citizen’s lives, are most likely to produce outcomes those citizens are likely to find tolerable. Sometimes, to be sure, public choice theorists seem to have been more concerned to minimize the domain of collective decision-making than to work out how collective decision-making may best be done – and of course the ‘optimal constitution’ will include a specification of the proper allocation of tasks as between market and political processes. But an important strand of the agenda has always been that of designing better rules for collective decision-making itself – and there can be no sense in which public choice theorists have been disposed to embrace specifically *non-*democratic institutions as a central part of that agenda.

In any event, over the months and years following the publication of *The Power to Tax*, Jim and I found ourselves patiently (and sometimes not so patiently) trying to rehearse these simple claims – to explain that political outcomes are to be thought of as equilibria; that the normative properties of any such equilibria reflect the institutional framework under which they emerge; and that in that sense the institutional framework (the rules of the game) is a proper focus of normative analysis (and arguably the *primary* such focus). That, as we saw it, was the core of the ‘constitutional political economy program’ – and we saw *The Power to Tax* as an application of one simple idea within that program. In the process, we were led to write various defences and elaborations of aspects of the constitutional approach – some of them jointly, some separately or with other co-authors. And at some point in the early 80’s it seemed appropriate for us to try to draw these bits and pieces together. *The Reason of Rules* was the result.

One of Jim’s favourite quotations in relation to his various expositional efforts – both in print and in the classroom -- was from Herbert Spencer:

*“Only by varied reiteration can alien concepts be forced upon reluctant minds.”*

I’m not sure how much “*force*” was in play. The only real tool at our disposal was reasoned argument. But certainly, we had found the minds in question surprisingly “reluctant”, even to the point of obstinacy (as some remarks in the book’s preface hint). Apparently ideas that seemed obvious enough to us were “alien” to many. But the chief relevance of the Spencer quote is that we didn’t think of *The Reason* as an occasion to say things we hadn’t said before: we didn’t embark on doing something especially original, or striking. *The Reason of Rules* was, in its conception, essentially a piece of “*varied reiteration*”.

However, I confess that I had thought that this might be an opportunity for Jim to engage with what I (and others) had seen as some of the general conceptual questions that the contractarian constitutionalist position raised – issues like the plausibility of the constitutional ignorance assumption; or what one might say when no consensus emerged; or the status of political as contrasted with market processes (and specifically whether there is any genuine difference identifiable within the constitutionalist approach); or the challenge from evolutionary as opposed to constructivist constitutional approaches; or the question of whether some moral issues defy ‘constitutional’ solutions. Some of these issues are raised in the early chapters of the book – but acknowledged rather than engaged with. In that sense, I’m not sure how successful we were in moving much beyond mere reiteration – at least in relation to basic constitutional principles.

*Some* of the material was, I think, genuinely new: it had not appeared (and did not appear subsequently) in independent form. Jim and I had, in the immediate aftermath of writing *The Power to Tax,* discussed the possibility of writing a companion volume on the “power to *transfer*” or perhaps an amalgam of that with some discussion of the “power to *regulate*”. Some of the “transfer” material appeared in *The Reason of Rules --* in chapters 7 and 8 on the relation between rules and justice, and on *distributive* ‘justice’ in particular. It struck me at the time that what we did was interesting and suggestive, and I guess I am a trifle disappointed that that material was never much followed up (‘still-born from the press’ like Hume’s *Treatise[[1]](#footnote-1)*). The central issue raised in that discussion is that, for questions of distributive justice no less than for other normative issues, the constitutional level should be the first port of call analytically. That is, we ought to be interested in ‘*institutional* incidence’ rather than the incidence (distributive effects) of specific taxes or expenditure operations. Perhaps public choice theorists are less interested in distributional questions because they seem to fit less well within the contractarian paradigm. The question of whether and to what extent the constitutional contractarian approach rules out matters of distributive justice is an interesting question. But anyone who thinks distributional considerations are normatively relevant ought to be concerned with the distributional consequences of different possible rules of the game.

The point is worth perhaps some elaboration. I have always thought that Jim’s constitutionalism was driven largely by his contractarianism – the recognition that Wicksellian unanimity, if it was to have a practical life, would have to be applied at the constitutional level. But once one accepts the general point that political outcomes are to be thought of as equilibria under a specific set of institutional rules, the constitutional approach has something to say to normative analysis whatever the normative framework and whatever the precise motivational assumptions of the players in the relevant models.

As to the power to regulate, by the time I began to think more seriously about that topic, I was back in Australia and the logistics of trans-Pacific collaboration seemed an overpowering obstacle.

One other little-known factoid is that I had originally drafted a companion to the chapter on motivation. In the relevant chapter (4) we had offered a developed form of the ‘precautionary’ defence of the use of *homo economicus* motives in political models. The drafted *companion* chapter was to lay out the bare bones of the expressive voting argument. Lomasky and I had been working on this material through 1982/3 when Loren was a Center visitor; and it seemed to me logical to add something of this kind as a kind of balance to the argument in chapter 4. Buchanan and I had worked on one paper on the expressive theme, which appeared in the *American Behavioral Scientist* in 84, so we were certainly working on this theme together during the time when *Reason* was in progress; and in any event the expressive argument really picked up and elaborated ideas that Jim had already long since foreshadowed in his 1954 *JPE* article. But for some reason, Jim vetoed inclusion of this material. It was, as far as I can recall, the only occasion on which Jim vetoed the inclusion of anything I had written – and I still don’t know what lay behind the decision. Perhaps he thought that the whole idea needed separate development along the lines that eventually produced *Democracy and Decision*. If so, he never let on.

It needs to be borne in mind that *The* *Reason of Rules* was written during rather tumultuous times in the life of the Center – at the height of battles at VPI between the Public Choice Center and the Economics department; and presaging the Center’s decision to move to George Mason. I have no care to rehearse the terms of those battles here; but I felt myself to be in the middle of them in several senses. One awkwardness for me personally was that, though I was a strong supporter of the ‘Center-departure’ option, I was myself unlikely to join the move. The domestic consensus in the Brennan household was that, if we were to move at all, then we should return to the ANU, to Canberra, to Margaret’s extended family and all the amenities of Australian life! This meant in turn that *The Reason of Rules* was very likely to be the last major Brennan-Buchanan collaboration. And so it was to be. Apart from a short piece in the 1988 *Virginia Law Review* (and a couple of verses of that immortal song ‘Bye Bye Blacksburg’ to be rendered later today) *The Reason of Rules* was to be our last joint effort.

From my point of view, this was highly regrettable – and in several dimensions. Jim was a great co-author – he was tolerant of my stylistic eccentricities, almost always generous-spirited about any ideas I had, and charitable even when he thought I had “fouled up”. And of course, my association with Jim, even before he won the Nobel Prize in 86, hardly did my professional reputation any harm! No less unsurprisingly, we did have the occasional explosive disagreement – usually about religion (one of which occasions was truly notable), and sometimes about meta-ethical issues. (I always thought Jim was very slippery on the status of moral positions. And his routine appeals to the “relatively absolute absolute” I confess I found more evasive than informative!). But I was not usually the butt of Jim’s fury – for which, I must say, I remain grateful, because his anger could be formidable.

In the six years that I was at the Center, most of my published output was joint with Buchanan. The large exception to this was in 82/3, as the *Reason of Rules* was entering its final stages, when Loren and I began the collaboration that produced quite a number of articles and eventually the book, *Democracy and Decision.* I say most of my output was joint with Jim; but that output was of course only a part – a slightly depressingly *small* part -- of Jim’s. I think this was the experience of all Jim’s co-authors. Buchanan always had lots of things “on the go”, lots of talks to various groups (all of which, I may say, he always had fully written texts, all written about nine months before presentation.)

*The Reason of Rules* was well enough received. It seems to have been tolerably widely cited – but interestingly it never achieved the prominence of *The Power to Tax.* [Google Scholar citations for *The Power* for example are about twice those for *Reason of Rules.* In fact, *The Power to Tax* is, after *The Calculus of Consent,* the most highly cited of Jim’s books – which means in particular that it has a citation count surprisingly higher than that of *The Limits of Liberty.*]

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| **title** | **Google scholar cites (08/2013)** |
| The Calculus of Consent | 8000 |
| The Power to Tax | 2900 |
| The Limits of Liberty | 2470 |
| The Reason of Rules | 1376 |
| Democracy in Deficit | 1314 |
| Public Finance in Democratic Process | 707 |
| Cost and Choice | 706 |
| Public Principles of Public Debt | 291 |
| Politics by Principle | 263 |

I am sceptical of the value of citations as evidence of scholarly significance. But I do think *The Power to Tax* was in many ways a better book than *The Reason of Rules* – it had a simpler and more striking message; it was more focused and therefore more comprehensible. Authors are arguably poor judges of the relative merits of their own works, but I don’t think *The Reason of Rules* did full justice to its subject matter. The significance of ‘rules’, the centrality of the constitutional/in-period divide in Buchanan’s thinking, the full strength and power of the constitutional approach, these are depths not adequately plumbed in the book. Although I retain a certain affection for it, and although I think it contains some interesting stuff, I don’t think the contents quite live up to what the title promises. I think we could have done better. I wish we had.

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September 2013

1. This is not to claim any similarity with Hume’s *Treatise* in any other respect! [↑](#footnote-ref-1)