

## Reply to Buchanan



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REACTION ESSAY

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*[Note: The commentators' replies were written contemporaneously and independently and therefore do not take the other comments into account.]*

Dr. Buchanan advances a vision of government—especially the federal government—that I find attractive. There is, alas, a lingering nostalgia for the vision of the minimalist state as a purer form of government, one that advances everyone's economic well-being while maximizing personal freedom. While I have a romantic attachment to this vision, I'm far from convinced that it would achieve the goals set for it—that we'd be living in a better world today if only we repudiated the New Deal, or had never adopted it in the first place. Whenever I try to imagine what such a world would look like, I look at the world we do live in and recognize that we don't have it so bad at all. We have the world's strongest economy by far; we are the only superpower, having managed to bury the Evil Empire; and we have more freedom than any other people anytime in history. We must be doing something right.

One thing I'm pretty sure of, though, is that Dr. Buchanan's vision is not shared by most of the American public. While nearly everyone has some beef with government at its many levels, there are very few who would, had they the power, fundamentally change the relationship between the government and the governed in the ways Dr. Buchanan envisions. Thus, unless we assume that his three proposed constitutional amendments are to be imposed by some power outside the American democratic process—by a Philosopher King, as it were—we have to imagine a very different world, and a very different popular attitude toward what the government is expected to accomplish. In other words, an America where it were possible to gain the super-majorities needed to pass Dr. Buchanan's proposed constitutional amendments would, in effect, be an America populated by 200+ million committed libertarians. In that world, the kind of constitutional amendments

Dr. Buchanan proposes would be politically feasible, but probably unnecessary; people who would adopt those amendments would also be people who wouldn't really need them, because their view of what government is supposed to do would be so much narrower than is the norm today. Or, to put it differently, a body politic that needs Dr. Buchanan's amendments is a body politic that won't adopt them in the first place.

But it's not my purpose to quibble with the premises of Dr. Buchanan's proposals. I will assume, therefore, that we are politically of a mind with Dr. Buchanan in wishing to achieve the minimalist state, or something close to it, and we have been commissioned to select the three best constitutional amendments to constrain future generations that may not be as clear-sighted as we are. The question then is: Are the amendments, as proposed, workable? Or are there better ways of achieving the same ends? I will discuss each proposal briefly, and then offer my own counter-proposal.

### **Fiscal Responsibility**

The goal of restraining government spending, if only to prevent, as de Tocqueville feared, government bribing the voters with their own money, is certainly a sound one; no one seriously disputes it. But is there really a reason to enforce fiscal responsibility by precluding (or greatly restricting) deficit spending? Polonius's advice notwithstanding, it *is* possible to be fiscally responsible and yet do a certain amount of borrowing for capital items. People don't spend only what they earn; rather, individuals spend most of their lives deeply in debt—for an education, a house, cars, a vacation home, whatever.

A country is no different, in that respect, from an individual. Certain government expenditures are annual, like salaries of government employees, but others are clearly capital and long-term, such as government buildings, highways, public education, space programs, etc. Even if one were to take the view that government should not be engaging in many of those functions, you'd still need capital expenditures for those functions that *are* legitimate. Thus, there are no disposable tanks, aircraft carriers and nuclear missiles; these items must be built and paid for in one fiscal year, yet be usable for many years to come. I can see no justification for forcing the government to buy such items outright from current-year tax revenues when their use will benefit us far into the future. Conversely, I see no fiscal irresponsibility in borrowing to finance such items, and thereby amortizing their cost over their

expected lifetimes, so that future generations will pay their fair share for the items they use and enjoy.

I recognize that a constitutional amendment that prohibits, or strictly limits, deficit spending may be easy to articulate and administer, but I'm not sure that's a sufficient reason to adopt it. The effect of such an amendment may well be to under-procure items that have a long-term value because the current taxpayers, who have to foot the entire bill, will only get a small fraction of the benefit. And future generations will, in effect, have no voice in the matter, and no way of contributing their money to a venture that may be of tremendous benefit to them, but won't be built because current taxpayers are unable or unwilling to pay for the entire project. This is a serious drawback to the proposed amendment, one that should be avoided if at all possible.

### **Nondiscriminatory Politics**

Here Dr. Buchanan would impose a constitutional constraint that would pretty much hand over the running of the federal government to the judiciary. The reason for this is quite simple. All governmental action is inherently discriminatory: The penal code discriminates against those who commit certain acts (defined as criminal) and in favor of those who refrain from those acts. Taxing and spending are inherently discriminatory activities. No matter how uniformly a tax is laid, it will fall more heavily on some than on others; even if the tax is per capita and absolutely uniform, some will see the tax burden of, say, \$10,000, as trivial, whereas others will see it as crushing. Building a bridge over the Mississippi will benefit the entire country, but it will benefit most those who live closest to the bridge and/or have a lot of goods they need to transport from one side of the river to the other. The decision to locate the bridge in one community will benefit bridge contractors here, whereas locating it a few miles down-river will benefit the contractors there. The list is endless.

Dr. Buchanan recognizes this and suggests the development of interpretational principles that will legitimize certain kinds of discrimination "by appeal to 'the public interest.'" As an example, he offers tax benefits for pensions that might be justified as non-discriminatory on the theory that we all get old. Putting aside the fact that some die young, why does the fact that everyone is similarly affected by a particular policy necessarily make it non-discriminatory? Some may prefer current consumption and hope to rely on

charity when they're old; others may be independently wealthy and not need a pension; still others may be self-employed or unemployed and not earn a pension. There are very few ways—if any—in which we are all exactly equal. Unless the distinction between what is and what isn't justified by “the public interest” is spelled out in the constitutional amendment itself—a task I believe is pretty much impossible—the decision will be left case-by-case to the judges. Does the President want to invade Iraq? The courts would have to decide whether that is consistent with the principle of equality. Does New Orleans need rebuilding as a result of a hurricane? The government could help only after the courts determine—by means that are not now predictable—that providing the funding and expertise is consistent with the equality principle. In effect, we'd have *Bush v. Gore* going on 365 days a year, all over the country. As a prescription for curtailing governmental action, this would surely work. But it would also remove much of the power of government from elected officials and give it to un-elected federal judges. The push to appoint judges sympathetic to the government's current policies will be strong, and we will look on the “mild” confirmation battles of the past as the good old days.

## Natural Liberty

As I understand this proposal, this constitutional amendment would limit the power of government to protecting the right to voluntary exchange, and would preclude government from dictating the terms of such exchange. I pass over the political difficulty of adopting any absolute governmental guarantee of all voluntary transactions—which presumably would include markets in slaves (provided individuals voluntarily sold themselves into slavery), sexual favors (including possibly those of consenting minors), drugs, physical violence and coercion, price-fixing, pollution, etc. Even then, however, we can hardly say that the government has exhausted its useful functions. What about police protection—and I don't mean simply the protection of voluntary exchanges, but the protection against people hitting you over the head and taking your money, or raping you for the (non-economic) pleasure of it; what about raising armies and navies—and equipping them—to keep us from being invaded by a foreign power? What about the courts or equivalent mechanisms for adjudicating disputes? Without them, none of these constitutional guarantees would mean very much.

How would these functions—or, more specifically, particular attempts to fulfill some of these functions—square with the principle of natural liberty, as

envisioned by Dr. Buchanan? I suspect that there *is* a way—and that Dr. Buchanan will explain what it is in his further postings—but what’s important is that there is no agreed-upon standard for what “natural liberty” means, how it operates or what its limiting principles are. The only way to really flesh it out will be by case-specific decisions from the courts. Once again, the judges will rule.

## Conclusion

I have serious doubts about whether fundamental changes in our constitutional structure are really needed or desirable. We do have it pretty good, and we should hesitate long and hard before we make fundamental changes to our system of government, which may have momentous, incalculable and possibly irreversible effects on our way of life.

But if we do want to shake things up a bit, if we do want to cut down on the power and scope of the federal government, if we do want to make a radical—yet somewhat predictable—change in the way we operate as a nation, we can accomplish this by a single amendment, comprised of only 15 words: “The sixteenth article of amendment to the Constitution of the United States is hereby repealed.”