

# Michigan Law Review

---

Volume 81 | Issue 4

---

1983

## So Reason Can Rule

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Law and Philosophy Commons](#), and the [Law and Society Commons](#)

---

### Recommended Citation

Michigan Law Review, *So Reason Can Rule*, 81 MICH. L. REV. 1114 (1983).

Available at: <https://repository.law.umich.edu/mlr/vol81/iss4/53>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

SO REASON CAN RULE. By *Scott Buchanan*. New York: Farrar, Straus and Giroux. 1982. Pp. vii, 321. cloth \$12.95; paper \$5.95.

*So Reason Can Rule* collects thirteen essays on law and politics by Scott Buchanan, the late educator and philosopher.<sup>1</sup> The book displays Buchanan's extensive knowledge of Western intellectual heritage, drawing on sources from nearly all Western cultures since Classical Greece. Although written over a 15 year period, the essays together present a coherent, readable version of what Buchanan viewed as society's fundamental political problems and a prescription for reform.

Buchanan aligns himself with the social contract theorists of the seventeenth and eighteenth centuries. The principle of consent and federalism underlie much of his political thought. "Democracy as self-government or government by the consent of the governed, is not one of many forms of government," Buchanan states. Echoing several social contract theorists,<sup>2</sup> he claims, "[I]t is a principle of all government; governments derive their just power from the consent of the governed" (p. 69). The United States Constitution, according to Buchanan, confirms this principle (p. 185). Buchanan also adopts the views of Montesquieu, who observed that "[i]t is natural for a republic to have only a small territory,"<sup>3</sup> and thus that a large territory or population would have to employ the federal principle in creating a republic (pp. 39, 150).

These two principles also lie at the foundation of Buchanan's proposal for political reform — to grant charters to all private, voluntary associations, corporations, and institutions, to grant them the power of self-government, and to coordinate these chartered institutions according to a federal scheme (pp. 168-76). Buchanan proposes that a "subconstitutional federation [of these organizations] be set up, or imagined, as a new branch of government, independent and autonomous . . ." (p. 176). In other words, Buchanan envisions establishing a federation in which such organizations have a status roughly equivalent to that afforded the States in the present scheme.

Buchanan advances this striking proposal in response to two perceived

---

1. Mr. Buchanan died in 1973. He is best known for establishing the "New Program" at St. Johns College, Annapolis, Maryland and Sante Fe, New Mexico, commonly known as the "Great Books" program. Buchanan was concerned that prevailing trends in education were not properly preparing students for life as citizens and were ignoring the intellectual foundations of our society. Accordingly, Buchanan, in conjunction with other notable educators such as Robert Maynard Hutchins, designed a curriculum in selected great books in fields such as classical and modern languages, mathematics and natural sciences. This book, the first in a planned series, was assembled for publication by a committee of Buchanan's friends, colleagues, and students, in an effort to bring his work to a wider audience. Pp. xi-xii. *See also* ST. JOHN'S COLLEGE, THE ST. JOHN'S PROGRAM v (1955); N.Y. Times, Mar. 29, 1968, at 41, col. 1.

2. For writings of major seventeenth and eighteenth century social contract theorists, see T. HOBBS, LEVIATHAN 129-45 (M. Oakshott ed. 1946); J. LOCKE, TWO TREATISES OF GOVERNMENT 374-77 (P. Laslett ed. 1960); J. ROUSSEAU, THE SOCIAL CONTRACT AND DISCOURSES 7 (G. Cole trans. 1950).

3. C. MONTESQUIEU, THE SPIRIT OF THE LAWS 120 (T. Nugent trans. 1949).

problems: first, the demise of reason, and the substitution of self-interest, in the legislative process; second, the failure of the present scheme of self-government to educate the citizenry.

Writing on the demise of reason, Buchanan declares that “[u]nder our Constitution the law divides itself so that reason can rule” (p. 228). In other words: “Following Locke and Montesquieu, the Constitution distinguishes three great offices, powers, or functions: the legislature, the executive, and the judiciary; and to them are assigned respectively three uses of practical reason: the making of laws, the executing or administration of laws, and the adjudication of laws” (p. 198). Reason was to function in each of these branches. Courts, for example, add reasons to the interests of the parties (p. 62). The Constitution, for Buchanan, protects members of the legislature from the influence of interests and powers that might impair the use of reason (p. 63). On the executive level, administrative agencies are empowered to hold hearings at which parties will present reasons for a particular ruling (p. 63). Thus, the potential for reason to rule exists in every branch of government.

According to Buchanan, however, this potential remains largely unrealized. The drafters of the Constitution did not anticipate the rise of the corporation, party politics, and lobbying (pp. 87-88). “To the eighteenth-century mind, which sought to ensure its liberties by separating governmental powers and trusting them to rational debate, the addition of economic powers, money, industry, and welfare to the fragile political forms of the republic is letting the bull loose in the china shop” (p. 96). One reason a republic can exist only in a small territory, according to Montesquieu, is that in a small territory the common good is easier to discern.<sup>4</sup> Buchanan, then, proposes that the federalist principle be extended to all associations so that reason, with a view to the common good (as opposed to the interests of powerful groups), can rule.

As for the failure of the present scheme of self-government to educate the citizenry, Buchanan writes that the

Founding Fathers all learned through their tutors what Montesquieu had said, that the principle of the republican form of government is political virtue, and that the source of such virtue is education . . . . They did their best to give this country the basic and comprehensive legal structure that would make the day-to-day life and work of the citizen and the officials self-educative.<sup>5</sup>

In Buchanan’s view the citizens of a republic are educated in part by participating in the process of self-government: “[T]he laws are the teachers, and . . . the making, obeying, and remaking of laws is the essence of collective self-education” (p. 20). In a society as large as our own, citizen participation in self-government, and thus in the process of self-education, is minimal. By extending self-government, under a federal scheme, to all private voluntary associations, presumably citizen participation in self-government and the self-educative process would increase. Participation in

---

4. *Id.*

5. P. 21. The Montesquieu passage alluded to can be found in C. MONTESQUIEU, *supra* note 3, at 34.

turn instills political virtue, the principle of republican government, in the citizens.

Thus, as far as it goes, the political philosophy expressed in *So Reason Can Rule* is well-integrated. Governments derive their just powers from the consent of the governed: self-government is the principle of all government. Through participation in self-government, citizens acquire political virtue, which is the principle of self-government. In a large society, not only is citizen participation and self-education minimal, but the common good is hard to discern. Economics and political interest, not reason, become the dominant influences on law-making. Chartering public and private organizations, and thereby granting them powers of self-government, and coordinating them under a federal scheme, responds to these problems.

The main problem with this political philosophy is one that Buchanan was aware of when he stated: "I confess I have no detailed blueprint" (p. 177).<sup>6</sup> Even this candid admission may be understated. One has to wonder: Are for-profit corporations really to be allowed to govern themselves, and given powers comparable to those of States? Certain passages suggest that this is indeed what Buchanan intended: "[I]t would be interesting to see if replacing the Sherman antitrust law by the ensurance of a republican form of government to all private corporations would . . . hasten the present tendency of the business corporation to accept more community responsibilities" (p. 98). Granting private corporations the powers of self-government might just as easily hasten their tendency to ignore community needs. Perhaps unchecked self-government by for-profit corporations is not intended (pp. 176-77), but as it stands, *So Reason Can Rule* admits of this interpretation.

Another detail left to the reader's imagination is whether for-profit corporations in this scheme will be managed democratically. This would impose a significant cost in terms of economic efficiency. The management and ownership of corporations were originally separated because distributing all information relevant to every particular decision to all owners, or citizens of the newly chartered corporation in this case, is expensive. Additional expense could be expected to accrue from organizing citizens whenever a decision is at hand. Further, the average citizen cannot be expected to have the education or skills of professional management.<sup>7</sup>

A final difficulty with *So Reason Can Rule* relates to a characterization of the ideal state of affairs. Elaborating on Kant,<sup>8</sup> Buchanan asserts that "all good laws must be rules of reason within a kingdom of nature, or ends in which men are masters or the ends-in-themselves" (p. 309). Though men are to be ends-in-themselves, Buchanan implies that the United States should establish this kingdom of ends in undeveloped countries (pp. 15, 320). To impose a form of government on a people is inconsistent with

---

6. For a more detailed proposal, see R. NADER, M. GREEN & J. SELIGMAN, *TAMING THE GIANT CORPORATION* (1976). See also, Note, *Federal Chartering of Corporations: Constitutional Challenges*, 61 GEO. L.J. 123 (1972).

7. See Gilson, *A Structural Approach to Corporations: The Case Against Defensive Tactics in Tender Offers*, 33 STAN. L. REV. 819, 834 (1981).

8. See generally, I. KANT, *FOUNDATIONS OF THE METAPHYSICS OF MORALS* (L. Beck trans. 1959).

treating them as ends-in-themselves. Though self-government may be the best form of government, a nation must adopt this form on its own. Otherwise, the nation's citizens have not consented to the government, and its authority, on Buchanan's own premises, would not be legitimate.

*So Reason Can Rule* presents an interesting and coherent, albeit somewhat general, political philosophy that accommodates the modern corporation, in whatever form, within traditional natural law and social contract theory. The several essays collected in the book also describe the function of law in a government such as that established by our Constitution. The principle difficulty with the book, perhaps attributable to the fact that it is a collection of essays, is the highly abstract level at which the exposition of political philosophy proceeds. For the lawyer seeking the answer to a particular practical problem, the book is unlikely to be of help. But for those wishing to contemplate the function of law under our Constitution, *So Reason Can Rule* makes thought-provoking reading.