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# Stability of the liberal order, moral learning, and constitutional choice: an unresolved tension in James Buchanan's political economy

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**ABSTRACT**

Buchanan mentions at several points in his oeuvre the necessary role for a *constitutional attitude*. This attitude is both explanatory and evaluative; it explains why citizens value liberty but also highlights one of the necessary conditions for the stability of a free society. We argue that Buchanan's idea of a 'constitutional attitude' is extremely relevant, though underdeveloped. Firstly, it remains an open question what exactly a constitutional attitude means in practice and it is unclear what kind of institutions would foster it. Secondly, we believe that the success of his constitutional political economy project depends on some account of moral learning. Although Buchanan stresses the individual aspect of the process of self-constitution, he doesn't take sufficient account of how the institutional environment and our social relationships structure this process. We discuss to what extent a broadly neo-Aristotelian account of moral learning can provide a more robust foundation for Buchanan's ideas.

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## 1. Introduction

In recent years, the Western liberal order turned out to be more fragile than predicted by Fukuyama's famous declaration of the 'end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government' (1989, p. 4). Traditional parties of the center are in decline in many Western democracies and populist movements of the right and the left have won elections or significant shares in parliaments. In many places, citizens do not any more regard the liberal post-WWII consensus

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– i.e. the combination of a competitive market economy, an open democracy, and the rule of law – as the most attractive form of social order. Rather, they are increasingly willing to delegate their rights of self-determination and democratic participation to strong populist leaders with far-reaching decision authorities (Rodrik, 2018; Mounk, 2019).

In the context of this 'new' crisis of liberalism (Dold & Krieger, 2019), the writings of Nobel Prize Laureate James M. Buchanan have experienced a resurgence. Both critics (MacLean, 2017; Block, 2018; Mirowski, 2019) and advocates (Coyne, 2011; Boettke, 2014; Levy & Peart, 2019) of his constitutional political economy refer to his work when discussing the culprits and saviors of the current instability of liberal social orders. In this paper, we will not delve into the debate about the impact of public choice theory and Buchanan's work on current politics or in academia. Rather, we will engage in an immanent critique of his work by analyzing how Buchanan himself struggled with the issue of the stability of liberal institutions. More specifically, we will focus on the question of whether one can be confident that rational agents will show an interest in *constitutional thinking*, i.e. in reforming and improving the 'rules of the social game'.

For the sake of the argument of this paper, it helps to differentiate between two elements of Buchanan's constitutional political economy. On the one hand, his project is a *moral-justificatory endeavor* in that it reconstructs the liberal legal-political order based on the assumption of rational, self-interested agents (see, e.g. Buchanan & Tullock, 1962; Buchanan, 1975). On the other hand, Buchanan wants his account to be a *positive-pragmatic enterprise*. At various points in his oeuvre, Buchanan points out that his approach can deliver the necessary ideas to make existing liberal constitutions more robust and, if necessary, stimulate debates about ongoing reforms (Buchanan, 1975, p. 209ff; Buchanan & Tullock, 1962, p. 299ff; Brennan & Buchanan, 1985, p. 134ff). This paper will focus on the pragmatic, not the justificatory aspect of Buchanan's account. In other words, we will ask whether Buchanan's account deals sufficiently with the question of what the necessary conditions for the robustness and stability of liberal institutions are.

We argue in this paper that, although Buchanan recognizes the need for morally motivated individuals in moments of constitutional choice,[1] he cannot solve the practical problem of rational ignorance, i.e. agents often lack the rational incentive to engage in the provision of the public good of general rules. Consequently, Buchanan's analysis justifies large-scale liberal orders in theory, but it is unable to explain convincingly how individuals develop

[1] By 'constitutional choice', Buchanan understands a choice situation whereby agents think, discuss, and establish the rules that constrain their own and their peers' future actions. Buchanan considers the term 'constitutions' in a very broad sense. Although he primarily means the rules of the political game, i.e. state constitutions, he wanted the logic of constitutional choice to be also applicable to families, sports games, firms, public institutions, etc.

a constitutional attitude, i.e. a sense of responsibility to engage in constitutional choice at the individual ('the private man') and social level ('the public man').[2] Furthermore, his account cannot explain how liberal political orders come about, stabilize, and advance. This is largely because Buchanan (a) fails to specify what a constitutional attitude would mean in modern, large-scale democracies and he (b) underappreciates the formative role that social relationships and practices play in the development of individuals' constitutional attitude. As a result, it remains unclear what kind of institutions (formal or informal) would encourage the formation of individuals' constitutional attitude *in practice*.

In addition, we argue that Buchanan's liberal contractarianism needs an empirically informed theory of moral learning. In this regard, we discuss to what extent a broadly neo-Aristotelian account of virtue can enrich Buchanan's framework. In many of his writings (e.g. 1979a, 1989, 1994), Buchanan embraces notions such as *habitual learning*, *commitment*, and *processes of individual betterment*. In his 1994 book on *work ethic*, Buchanan asks why people are better off when they work harder, save more, and deal honestly in markets and in politics. Hence, we think that Buchanan's thinking is compatible with virtue ethical ideas. In the context of this paper, virtues can be understood as qualities of mind and character that enable an individual to stand back from her preferences, evaluate what the provision of general rules in a community seems to require from her, and to use her skills in order to implement those rules. Although some individuals will fail to grasp what is morally required of them, the virtues allow them to at least consider reasons for action other than their narrow self-interests.[3] Paired with empirical evidence on the interplay between institutions, preference formation, and moral learning, we argue that neo-Aristotelian ideas on virtue can contribute to *a more robust motivational foundation* of Buchanan's contractarian project and lead to insightful policy implications.

Our argument dovetails with recent work at the intersection of economics and philosophy where scholars have successfully incorporated the notion of virtue into the analysis of economic and political institutions (e.g. Sen & Nussbaum, 1993; Brennan & Hamlin, 1995; Bruni & Sugden, 2013). Furthermore,

[2] In the *moral-justificatory part* of Buchanan's contractarianism, the veil of uncertainty plays an important heuristic function that creates a sense of other-regardingness when individuals think about rules that regulate their future social interactions: individuals do not know where they will end up in the social game so they favor rules that are in line with the principles of fairness or generality (Buchanan & Congleton, 1998). However, this thought experiment presupposes that individuals are already taking part in the constitutional exercise. The point of our paper is more fundamental: if people live in a large-scale society with existing social rules, what will motivate them to take part in the constitutional exercise? In this context, Buchanan (1989) is right to point to the necessity of citizens' moral motivation – i.e. their constitutional attitude – to engage in rulemaking activities. However, and this is central for our argument, Buchanan does not sufficiently flesh out what this constitutional attitude is and what type of institutional thinking is needed to address the important issues of moral learning and crowding out/in of moral motivation.

[3] We are aware of the contrast between this account of the relationship between virtue and reasons for action and a more 'Humean' account of this relationship. We will say more about this in Section 3.

there is a rapidly expanding empirical literature in behavioral economics on the systematic interplay between institutions, economic incentives, and moral behavior that provides novel answers to some of the objections raised at virtue ethics (e.g. Frey, 1997; Gintis et al., 2005; Bowles, 1998; Deckers et al., 2016; Bénabou et al., 2018). In this paper, we hope to contribute to this growing field.

The structure of the paper is as follows. In Section 2, we discuss how Buchanan struggles to reconcile the assumption of self-interested agents with the need for a constitutional attitude. We argue that he cannot solve this conundrum on the level of constitutional choice since his account misses an institutionally embedded theory of moral learning at the individual level ('self-constitution'). In Section 3, we outline a broadly neo-Aristotelian account of moral learning. Section 4 discusses how this perspective leads to novel insights with regard to the analysis of institutional design. Based on empirical evidence, we argue that citizens' constitutional attitude is stronger when legislators acknowledge individuals as 'moral subjects' who can engage in informal public discussions and have access to formal means of political participation. Section 5 concludes.

## 2. Self-interested individuals and constitutional choice: Buchanan's dilemma

In the *moral-justificatory part* of his contractarian framework, Buchanan uses a thought experiment of a two-tiered decision procedure that shall indicate how individuals overcome the 'Hobbesian jungle': at the constitutional stage, behind a sufficiently thick veil of uncertainty, agents are assumed to be unable to identify their narrowly defined self-interests. They agree to overcome the conflict-ridden state of nature by establishing a constitutional regime in accordance with some generalizable criteria such as fairness or efficiency. At the post-constitutional stage, the established regime guarantees general basic rights through a rule-based institutional order within which agents can pursue their individual goals. In Buchanan's constitutional contractarianism, some have argued, there is no place for any genuine moral motivation of the agents; both in the constitutional and post-constitutional stage agents are assumed to be self-interested 'all the way down' (Gaus, 2018).

We deem this often-told story – prevalent in much of the public choice literature – to be an oversimplification which does not acknowledge the depth of Buchanan's analysis. In fact, Buchanan (1989) sees the need for morally motivated individuals in real-life constitutional choice. However, he also recognizes that there can be more or less severe obstacles to constitutional thinking (Brennan & Buchanan, 1985, p. 140ff). In real-world situations, agents do not, and in fact cannot, make constitutional choices behind a perfect veil of uncertainty. To some residual extent, real-world individuals are always able to predict the distributional implications of any proposed change in rules and are therefore

constrained by their self-interest at the moment of constitutional choice. The issue of entrenched self-interest is aggravated in situations of uncertain political property rights when agents do not know how much they would gain from a potential constitutional reform. Moreover, even if there are general welfare gains from potential political cooperation, there can be a deeper impediment to constitutional reforms in large-scale democracies: the single individual might lack the rational incentive to engage in the provision of the public good of general rules. Buchanan (1979a; 1989) acknowledges that this problem of 'rational ignorance' is persistent when individuals lack a 'constitutional attitude'.

In this section, we do not address the problem of the status quo entitlements or the effects of political uncertainties that limit the effectiveness of the veil of uncertainty heuristic in regular politics. Instead, we focus on the more severe *motivational issue*: how can we expect individuals' willingness to engage in constitutional decision-making if our behavioral assumption is that of self-interest? Buchanan is fully cognizant of this tension. For example, he states that in 'games with effectively large numbers of participants, there may exist little or no incentive for any single player to participate actively in any serious evaluation of the rules' (Buchanan, 1989, p. 370). From a rational choice perspective,[4] we expect an inevitable free-rider problem since investment in constitutional decision-making is costly (e.g. in form of time and transaction costs) and the likelihood for each individual to ultimately influence the choice among regimes is negligible. It is therefore not rational to become informed about institutional alternatives or to participate actively in constitutional choice. Rational individuals forgo investment in the public good of constitutional choice in favor of more immediate gratification of private goods. If we stay within the narrow framework of rational self-interest, Buchanan fears that changes in basic institutions could only be imposed by non-democratic, violent means or by slow and unconscious processes of social-cultural evolution (Brennan & Buchanan, 1985, p. 149).

Being aware of this conundrum, Buchanan admits that the self-interest assumption of the homo economicus, as powerful as it is in explaining and yielding predictions in market relationships *within given rules*, cannot readily

[4] We are aware that 'rational choice' in economics does not presuppose self-interest in the sense of selfishness, but only complete and transitive preferences and maximizing behavior. However, Buchanan himself used a narrow model of rational choice as it was common in the public choice literature of his time. The rationale for this rather narrow account of human behavior is, from Buchanan's point of view, philosophical. Buchanan doesn't deny the limitations of this model, and he accepts that for empirical research sometimes it is useful to use a broader account of human motivation. However, Buchanan distinguished between behavioral assumptions used in applied or empirical work ('positive economics') and those used in constitutional analysis (see Brennan & Buchanan, 1981, p. 159). Buchanan's justification for the use of a rather narrow version of rational choice in the latter case is Humean, in the sense that since power will be abused by at least some agents, we should assume that politicians will behave as 'knaves'. We shall say more on this point in Section 4. For a detailed analysis, see Kirchgässner (2014).

be applied to *choices among rules* that are necessarily public in scope: a utility-maximizing agent can play the market game successfully without concerning herself with potential changes in the rules of the game (Buchanan, 1989, p. 369). Accordingly, Brennan and Buchanan ask (1985, p. 145): 'Why should anyone do "good"? There is no way that economists who stay within the strict limits of the discipline can respond to such a question; they cannot manipulate utility-maximizing actors so as to offer a satisfying response.'

## Buchanan's (partial) answer: Integrating ethical considerations into constitutional choice

Buchanan (1989) argues that it is meaningless to talk about constitutional change unless individuals are motivated to think about how existing legal-political rules affect their lives. According to him, individuals must not simply accept the existing constitutional order as a 'relatively absolute absolute' (Buchanan, 1989, p. 369) but need to take responsibility for the rules under which they live. For this reason, he suggests that:

> each one of us, as a citizen, has an *ethical obligation* to enter directly and/or indirectly into an ongoing and continuing constitutional dialogue that is distinct from but parallel to the patterns of ordinary activity carried on within those rules that define the existing regime. (Buchanan, 1989, emphasis added)

This 'ethic of constitutional citizenship' is distinct from ordinary morality, since individuals who fully comply with a given set of rules, might still miss the necessary civic responsibility to also think about and influence the rules themselves. If individuals do not concern themselves with the rules that govern them, 'the constitutional regime that we inherit must be vulnerable both to non-principled exploitation and to the natural erosion of historical change' (1989, p. 372). In other words, if people do not have a constitutional attitude, one of the key ingredients for the liberal social order – viz., citizen's engagement with rules that govern them – is missing and the liberal character of the overall social order will not be robust and stable.

In order to retain hope for individuals' willingness to invest in constitutional dialogue and design, Buchanan motivates the introduction of individuals' ethical principles into constitutional choice (1989, p. 371). He knows that this violates the – narrowly defined – self-interest postulate. He asserts that 'becoming informed about, and participating in the discussion of, constitutional rules must reflect the presence of some ethical precept that transcends rational interest for the individual' (1989, p. 371). But what do persons actually do when they 'transcend rational interest' and act according to their 'ethical precepts'? We only find a partial and abstract answer in Buchanan's writings. Ethically motivated individuals 'place positive private value on "public good" for the whole community of persons, over and beyond the value placed on their own individualized or partitioned shares' (Brennan & Buchanan, 1985,

p. 147). Accordingly, individual choice can be modeled by a two-part utility function, $U_i(\pi_i, R_i) = f_i(\pi_i) + \theta_i g_i(R_i)$, where $\pi$ illustrates the individual's individualized shares, $R$ depicts her 'public regardingness', and $\theta$ is the degree of her ethical motivation.

Buchanan points out that the sole assumption of moral motivation does not guarantee that 'public regardingness' will be salient in moments of constitutional choice (Brennan & Buchanan, 1985, p. 146f). Firstly, the stability of constitutional thinking depends on the weight – symbolized by parameter $\theta$ – individuals place on the public good relative to their private good. Secondly, the relative weight individuals place on the public good depends on their expectation about the degree in which their fellow citizens share this inclination, i.e.$\theta_i = e_i(\theta_{j \neq i})$. And thirdly, referring to Levy (1984), a commonality of the type of public regardingness over a large number of individuals is necessary for this 'new' theory of constitutional choice to be operationally useful: 'If individuals differ widely in their conceptions of "good," attempts by each to "do good" amount to little more than random deviations from behavior modeled on self-interest postulates' (Brennan & Buchanan, 1985, p. 146). Put differently, if the integration of individuals' moral motivation is to carry predictive weight in moments of constitutional choice, individuals must share a conception of what public regardingness is (e.g. aiming at a maximal sum total of individual utilities) and hold a similar inclination $\theta$ to act accordingly. In a nutshell: the relative cost of public regardingness in moments of constitutional choice decreases with the existence of pre-constitutionally 'shared norms' (Brennan & Buchanan, 1985, p. 148).[5]

## *Institutions that mitigate generalized public goods dilemma: limited government and education*

The crucial question remains: how can we ensure a pre-constitutionally shared constitutional attitude in a large-scale society? Despite his convincing argument in favor of integrating individuals' ethical concerns into constitutional choice, Buchanan only vaguely explicates what kind of institutions would foster this constitutional attitude. Yet, he makes it very clear that he does not believe in a Hayekian solution, that is, one that relies on long processes of cultural evolution. In his opinion, 'great damage has been and is being done by modern economists who argue, indirectly, that basic institutional change will

[5] Brennan and Buchanan (1985:, p. 148) give the following illustration:

> An individual might voluntarily agree to a tax-transfer scheme that imposes a net individual cost of one hundred dollars, if he knows that all other, similarly situated persons will also bear net costs of one hundred dollars each. The same individual, however, may contribute only fifty dollars, or less, to privately organized schemes having the same purpose in the absence of the political program.

somehow spontaneously evolve in the direction of structural efficiency' (Brennan & Buchanan, 1985, p. 149). In other words: evolutionary mechanisms alone do not suffice to induce a constitutional attitude.[6]

Buchanan (1978) argues that the public goods dilemma of constitutional choice can only be mitigated if there is a correspondence between the external (formal) institutional structure and the internal (moral) constraints of individual behavior. This would be the case if an individual's moral attitude – e.g. for inter-generational equality of opportunity – corresponds to the legal-political constraints she faces – e.g. in form of high taxes on wealth inheritance. However, Buchanan points out that developments in the twentieth century drove these two sets of constraints apart:

> […] population increase has been accompanied by increasing mobility over space, by the replacement of local by national markets, by the urbanization of society, by the shift of power from state-local to national government, and by the increased politicization of society generally. Add to this the observed erosion of the family, the church, and the law – all of which were stabilizing influences that tended to reinforce moral precepts – and we readily understand why Homo economicus has assumed such a dominant role in modern behavior patterns. (1978, p. 365)

The consequence is the atomized individual: 'Modern man seeks not to live with his neighbor; he seeks instead to become an island, even when his natural setting dictates moral community' (1978, p. 366). Although Buchanan says that he is not 'some agrarian utopian calling for a return to the scattered villages on the plains' (1978, p. 366), he generally favors the 'devolution of central government power' (1978, p. 367) that might channel the moral motivation of citizens (and politicians) toward constitutional thinking. Following the principle of subsidiarity, the problem of rational ignorance would be diminished since individuals' single voices matter more at the local level. *Ceteris paribus*, 'the smaller the number of persons with whom a person interacts, the higher the likelihood … . that he will provide public good in his choice behavior' (1978, p. 363). Buchanan further explicates that 'history matters' in this context. If individuals have 'long adhered to a "constitutional attitude", fostered by a historical record during which limits on the power of governments have proved effective at least to a degree' (Brennan & Buchanan, 1985, p. 143), the willingness of persons to base their constitutional choice on ethical principles and more inclusive processes of decision-making is increased.

Crucially, Buchanan (1979a, p. 252) argues that the concern for external constraints in form of social and political institutions, the constitution of public

[6] Whether this was Hayek's own understanding of this problem is not our concern here. We simply use 'Hayekian' to describe the idea Buchanan is referring to, partly because the latter thought this was the case. Brennan and Buchanan (1985, pp. 9–10) note: 'Some modern social analysts (notably Hayek and his followers) display an apparent faith in the forces of social and cultural "evolution" to generate efficient rules.'

man ('the "character" of society, if you will'), presupposes an individual's constitution of private man ('which roughly translates as "character"'). According to him, individuals develop their character when they apply *private constitutional choice*, i.e. they implement rules that restrict their future selves in order to become the person they want to become (Brennan & Buchanan, 1985, chap. 5). This ability to think about private rules can then be extended to the public realm in the form of *political constitutional choice*. Respectively, without the incentive and awareness to think about one's own character first, individuals lack the necessary prerequisites to successfully think about the desired 'character' of their social environment. Regarding the former, Buchanan ascribes an important role to education, insofar as it can 'provide persons with both an array of imagined prospects and some means of valuation' (1979a, p. 254) that lie at the heart of the ability of developing one's own character. He is convinced that creative imagination acquired on the private level of self-constitution gradually develops into a more general constitutional attitude toward the nature of one's institutional environment. He concludes optimistically (1979a, p. 258):

> If man can envisage himself as a product of his own making, as embodying prospects for changing himself into one of the imagined possibilities that he might be, it becomes relatively easy for him to envisage changing the basic rules of social order in the direction of imagined good societies.

## *The missing link: A theory of moral learning*

Buchanan gives us some ideas on institutional elements that do foster a constitutional attitude: limited government, citizens' education, and democratic experiences of the past. Yet, he does not elaborate on the underlying processes of individual self-constitution. It remains unclear how the character and virtues of an agent co-evolve with her socioeconomic environment, that is, the reflexivity between the self-constituting individual (agency) and its institutional environment (structure) is not explained sufficiently. One might ask, for instance, whether institutions that individuals did not necessarily choose themselves (e.g. family, community, social norms, religion) do predefine their 'idea of betterness' and thereby the outcome of individual processes of self-constitution.

In our view, Buchanan underestimates the degree to which individuals are socially embedded practical reasoners. In contrast, he stresses the significance of mental processes when he states that 'the idea may be more important than the reality … in exerting influences on behavior' (1979a, p. 254). Buchanan thinks that the formation of an individual's character is not something that passively happens to a person, but it describes a *purposeful* and *self-determined* act, in which a person invests resources deliberately in becoming the person she

wants to become.[7] While Buchanan acknowledges that individuals are externally constrained by their socio-biological environment ('the natural world'), they are still able to imagine themselves as products of their own making and act accordingly – in Buchanan's terminology, individuals are 'artifactual beings' (1979a, p. 247).

In doing so, Buchanan focuses primarily on the cognitive prerequisites for self-constitution but tends to neglect its motivational and institutional underpinnings. He assumes that individuals develop an interest in reflecting upon their own character, feel responsible for their institutional environment, and transcend their self-interest to actively shape both levels by personal and deliberate acts. This is cognitively and motivationally very demanding for the single individual and might underestimate that the motivation for constitutional choice depends upon the adequate mixture of formal institutions, social practices, and individual habituation.

In summary, Buchanan does not provide us with a convincing theory of moral learning, i.e. he does not explain the process whereby individuals evaluate and shape their preferences through a process of reflection upon their reasons for action. We take his idea of a constitutional attitude to mean precisely this reflective character trait applied to the choice of social rules. Buchanan hints at the importance of individual cognitive capabilities (such as imagination and valuation) for constitutional choice, but it remains an open question how individuals acquire the necessary motivation for the formation of a constitutional attitude. His framework lacks a convincing narrative about the relationship between an agents' constitutional attitude (her perceived responsibility to reason about the public good) and her constitutional choice (her revealed preferences for the 'rules of the game'). Eschewing any *ad hoc* rescue of his account demands more reflection on this relationship. In the next section, we suggest that a broadly defined neo-Aristotelian account of virtue might be an ally in this reflection, precisely because it is in this tradition that the connection between institutions and moral learning has been forcefully emphasized (on this point, see Schofield, 2006, pp. 310–318).[8]

## 3. Buchanan meets neo-Aristotelian virtue ethics

It would be impossible, in the context of this paper, to do justice to the richness and variety of neo-Aristotelian moral philosophy. The account of moral

[7] For an in-depth discussion of this point, see Dold (2018).

[8] Contrary to our own position, Gaus (2012, p. 8) argues that 'neo-Aristotelian virtue ethics is a rejection of modernity rather than a solution to its problems.' An adequate response to this charge falls beyond the scope of this paper. We think the argument of this paper shows that there is nothing 'anti-modern' about neo-Aristotelianism.

learning we advance in this section draws upon some neo-Aristotelian insights, but we are well aware that some of the thinkers we draw upon might disagree on whether this account of moral learning can be fused with Buchanan's thought.[9] By moral learning, we understand a process whereby an agent is capable of evaluating her reasons for action and to stand back from her desires and preferences in such a way that she is able to judge what the pursuit of the good here and now demands of her. This notion of moral learning is Aristotelian in three senses. First, it departs from contemporary Humean accounts of reasons for action by claiming that desires are, can, and should be evaluated by agents in their practical reasoning. By contrast, in a broadly Humean account of practical reason evaluations and expressions of desire are normally conflated (see Thompson, 2008, pp. 97–119). Second, it assumes that the ability of moral learning depends at least in part on an agent's character traits, which is to say that there are certain personal dispositions that allow an agent to stand back from her desires. Thirdly, it assumes that the development of those character traits is a social process whereby different institutions might either foster or undermine our ability of moral judgment.

There are at least three reasons that make this synthesis between neo-Aristotelian moral philosophy and Buchanan's thought potentially fruitful. First, neo-Aristotelian moral philosophy provides a robust account of the connection between what Buchanan calls a constitutional attitude and practical reasoning. In turn, the neo-Aristotelian account of practical reason sketched below provides a grounding for Buchanan's account of the desire that individuals have of becoming the 'agents they want to become'. This is accomplished by making more explicit the connection between practical reason and human flourishing. Thirdly, neo-Aristotelian moral philosophy is quite explicit about the connection between social institutions and character formation, a connection that – as we have argued – is underdeveloped in Buchanan's thought. In fact, we think that neo-Aristotelianism not only acknowledges, but fully considers the reflexivity between the self-constituting individual and the institutional environment in which moral agents find themselves in.

Before proceeding, a few caveats are in order. First, it is important to note that some approaches to virtue ethics, especially in economics, tend to highlight a specific constellation of virtues (see, for example, McCloskey, 2006; Bruni & Sugden, 2013). Our approach is different since we are trying to explain *how* agents develop character traits rather than *what* the relevant character traits are. In other words, we are more interested in what makes an agent to engage in a process of moral learning rather than in specifying a particular constellation of virtues that are deemed to be desirable from a particular normative standpoint. This latter question is still relevant, but it lies beyond the scope of

[9] For an overview of virtue ethics, see Russell (2013a) and Snow (2018).

this paper.[10] The account of virtue and moral learning sketched below is compatible with various specifications of what the relevant virtues for developing a constitutional attitude are.

Second, we assume that moral perfectionism is not incompatible with value pluralism, which was a central concern for Buchanan. In this regard, it is important to distinguish between perfectionism in moral philosophy and perfectionism in politics. Both are related but they answer different questions. We stand firmly with Buchanan in defending value pluralism and state neutrality (which is what proponents of political perfectionism reject), but at the same time, we emphasize the need for a more robust account of the moral foundations of the liberal order. Some might object that moral perfectionism is alien to liberalism, or that it is more at home in communitarian political theory, which is generally presented as an alternative to the liberal order that Buchanan sought to defend.[11] In effect, thinkers such as Alasdair MacIntyre and Michael Sandel share a deep interest in neo-Aristotelian moral philosophy and communitarian political theory and both were important participants in the so-called liberal communitarian debate (see Mulhall & Swift, 1996). We think that this objection, while plausible, misses the mark for two reasons. First, there is no intrinsic connection between a neo-Aristotelian account of virtue and either liberal or communitarian political theory. In effect, the influence of neo-Aristotelian ideas in contemporary liberalism is not marginal, and various scholars have tried to develop an account of the liberal order that emphasizes its capacity to foster virtue (see, for example, Galston, 1991; Rasmussen & Den Uyl, 2005; Kramer, 2017). In addition, we think that, even if the connection between virtue ethics and communitarian political theory were strong, Buchanan would have been willing to engage in a systematic dialogue with communitarian political theory. As a matter of fact, Buchanan describes the arguments of some communitarians and various strands of liberalism as 'intersecting and partially complementary' (Buchanan, 1997, p. 47).[12]

Finally, we should note that the problem we are addressing is also present in republican political theory. In effect, an important subject in the classical republican tradition is the importance of civic virtue for the stability of a particular social order. The Aristotelian lineage of this tradition of thought has been persuasively established by the work of Pocock (1975). However, contemporary republican political theorists seem to depart from this lineage. For example, contemporary republican thinkers tend to emphasize the instrumental character of civic virtue, precisely to distinguish themselves form the more traditional reading of the republican cannon (see Dagger, 1997; Maynor, 2003).

[10] This is not to say that we reject either McCloskey's or Bruni and Sugden's arguments. Rather, we are focused on a different question: the development of moral character. And we think that this question is prior to defining the type of character traits needed for the stability of the liberal order.

[11] We thank one of the anonymous reviewers for raising this potential objection.

[12] In a similar vein, see McCann (2002).

In this paper, we eschew these interpretive debates and take for granted that a neo-Aristotelian account of moral learning provides a legitimate and robust foundation for Buchanan's intellectual enterprise.

## *Developing a constitutional attitude: the task of practical reason*

As we have explained in the previous section, Buchanan thinks that agents should engage in the development of their own character if they aspire to engage in constitutional reform, but he doesn't offer an explicit account of moral learning. From a neo-Aristotelian standpoint, the development of our character is the task of practical reason, understood as the ability to deliberate about our goals and actions according to different criteria of what is good for us as human beings. A reflective or virtuous practical reasoner is someone capable of evaluating her reasons for action and to stand back from her desires and preferences in such a way that she is able to judge what the pursuit of the good here and now demands of her.[13] This process of deliberation involves the individual *qua* individual and *qua* member of a community, insofar as the presupposed account of human agency is one of a socially embedded practical reasoner. We think that this is precisely what a constitutional attitude seems to require: individual agents should be willing to examine their reasons for action and to evaluate those reasons according to criteria that sometimes go beyond the mere satisfaction of their self-interested preferences. In Buchanan's terminology, practical reason would imply constitutional deliberation both as a 'private man' as well as a 'public man'. Although practical reason, in the neo-Aristotelian tradition, does not exclude instrumental reasoning, it cannot be reduced to it. While sometimes acting well means precisely using the most effective means for achieving a particular end, deliberation of our ends is as important as deliberation about the best ways of achieving those ends.[14] More fundamentally though, a neo-Aristotelian account of practical reason implies that our abilities to imagine ourselves as different beings will depend on how good we are at shaping our preferences and desires. If this is the case, we might not be able to engage in practical reason successfully if our desires and our ways of thinking about them are not properly educated, such that we are unable to inquire what is morally required from us in a particular situation. Character formation, on this view, implies moral learning, a process that allows agents to deliberate

[13] For some, the term desires is interchangeable with the notion of preferences. For others (ourselves included), preferences are more complex than desires because of their comparative nature. On this point, see Hausman (2011).

[14] We are aware that, for many contemporary philosophers, there is a clear distinction between acting well (or according to what is good) and acting rightly (or according to what is right). The political implications of this distinction are also quite fundamental for contemporary political philosophy (see Rawls, 1999, sec. 68). For many neo-Aristotelians the opposition between the right and the good is highly problematic. We cannot explain here the way in which neo-Aristotelians deal with this issue; for such an explanation see, for example, Oderberg (2000, chap. 2). For a 'rational choice' account of deliberation about ends, see Schmidtz (1994).

about their actions according to different criteria of what is good for them and for their community.

It is perhaps useful to contrast this brief sketch of practical reason with contemporary alternatives. Take for instance Davidson's (2001) classic account. The crucial difference between a neo-Aristotelian account of reasons for action and Davidson's account is that in the former desires are, can, and should be evaluated by agents in their practical reasoning whereas in Davidson's account evaluations and expressions of desire are normally conflated. Having a framework in which an agent's desires are distinguished from her expressions of evaluation is important for explanatory as well as for normative reasons. On the explanation of reasons for action, we could not, for example, make sense of the transition from childhood to adulthood, a transition whereby the child moves from acting on her desires in an unreflective way, to acting on this or that desire and being able to give reasons for her actions and therefore being able to educate her desires in some way. This transition takes place normally in the household and in elementary education. But more importantly, what every moral agent has to do in order to become a reflective practical reasoner is precisely to be able to make those judgements independently.[15]

But how do we learn to make our own moral judgements independently and reflectively? And more importantly, how do we shape our character according to those judgements? From a neo-Aristotelian standpoint, moral learning and education is not possible without the cultivation of the intellectual and moral virtues, that is, those qualities of mind and character that enable someone both to recognize the relevant goods at stake in a particular situation and to use the relevant skills in achieving those goods. Moral learning is the practice of the virtues that allows individuals to become reflective moral agents, capable of deliberating about their own lives and of the life of the community to which they belong.

The connection between character formation and moral learning sketched above rests on two central theses. The first one refers to the fact that we, as human beings, can act from reason, and our reasons for action involve certain characteristics that other living beings do not possess. Characteristic of us as rational animals is our ability to stand back from our initial judgements and to evaluate our reasons for action according to a great variety of standards. Those standards allow us to imagine ourselves as being someone different from what we are now.[16] The second central thesis has to do with the fact that the same ability for acting on reasons allows us to direct, educate, and to some extent

[15] This independence is not that of an 'isolated moral agent' but that of a socially embedded one.

[16] Interestingly, Buchanan states that 'man does not become less predictable because he uses language' (1979a, p. 247). Instead, '[…] a central difference between my dog and any one of us lies in his lack of any sense of becoming different from what he is' (1979a). Buchanan does not elaborate on this, as he is engaged in a discussion with his fellow economists, but we think there is an implicit theory of practical reason here.

transform our desires. One implication of this account of practical reason is that the development of our powers of practical reasoning is a necessary condition for human fulfillment, and indeed it is in some sense constitutive of it. As Daniel Russell argues, most virtue ethicists, 'ancient and modern alike, have believed that we are defined […] by our capacity for practical reasoning, both in thinking intelligently about what to do and in acting with emotions that can be intelligently trained' (2013b, p. 13).

Buchanan links the idea of constitutional attitude with the notion of human flourishing. He states that people want to become 'better persons' (1979a, p. 248). As mentioned above, one of the central tenets of neo-Aristotelian moral philosophy is precisely that the development of practical reason is a necessary condition for human flourishing. We think that when Buchanan states that 'persons must recapture an ability to imagine themselves as capable of becoming "better"' (1979a, p. 254), he has something like this connection in mind.

## *Institutions, social practices and moral learning*

Our outline of a broadly neo-Aristotelian account of moral learning would be incomplete without saying something about the connection between social institutions and moral learning. As stated previously, one of the central characteristics of a virtuous or reflective practical reasoner is her ability to stand back from her desires in such a way to be able to discern whether what she is pursuing is actually good for her or to the community in which she finds herself in. However, the standards that allow a person to evaluate her preferences are not the standards of an isolated moral agent, but those provided to by her social environment. If this is the case, it seems logical to assume that certain sets of social relationships will encourage reflective practical reasoning and the practice of the virtues, whereas others will not. More fundamentally, certain social institutions will be more conducive to the emergence of virtuous practical reasoners than others. Although neo-Aristotelian virtue ethicists take each person to be responsible for the type of character they acquire, most thinkers working in this tradition play close attention to the role that the family and the extended political community play in shaping the moral outlook of their members. In Richard Kraut's words,

> a city's mode of organizing itself, its unwritten norms of conduct, and its legal system have a profound effect on the manner in which its citizens interact with each other. A certain way of life takes hold in a community […], modes of thought and emotional response become second nature to the citizens; and these patterns are the product of their city's norms, laws and way of government itself. (2002, pp. 96–97)

One important implication of the relationship between social institutions and moral learning is that the connection between the liberal order and the constitutional attitude, which is required for the sustenance of such order,

runs both ways: on the one hand, a minimum of civic virtue is required to sustain a liberal order, but on the other hand, certain institutions have the potential to frustrate or 'crowd out' the development of virtue. This latter point connects with Buchanan's concern about the potential crowding out effects of global markets, urbanization, and centralization mentioned in the previous section. In this regard, we take both Buchanan's and the neo-Aristotelian project to be concerned with the comparative analysis of how different institutional structures can either undermine or foster the development of moral learning.[17] For it is precisely the process of moral learning that makes possible the salience of a constitutional attitude, an attitude on which the stability of a liberal social order depends. Deliberation about the rules of the game, particularly at the constitutional level of analysis, are therefore not restricted to devising incentive-compatible rules that would allow us to 'economize on virtue'. On the contrary, we should be asking which set of rules allow incentives and virtues to work in tandem. This is the question we address in the next section.[18]

## 4. Aristotle's legislator: institutions for citizens, not knaves

When analyzing the merits of alternative institutional settings, Buchanan argues that 'homo economicus is a uniquely appropriate caricature of human behavior' (Brennan & Buchanan, 1985, p. 53). The assumption that individuals are mainly driven by their material self-interest becomes the behavioral benchmark model for evaluating and designing rules, be it in the marketplace or in the legal-political realm ('behavioral symmetry'). In Buchanan's framework, externally implemented rules are required to overcome social dilemmas stemming from a lack of virtuous, i.e. other-regarding behavior, of citizens. Indeed, Brennan and Hamlin (1995, p. 35) identify the search for institutions that 'economize on virtue' as one of the central motivations of Buchanan's constitutional political economy. Broadly speaking, there are two reasons for this position: (a) individuals act selfishly and abuse power if not constrained; (b) a more realistic model of individual behavior (e.g. one that acknowledges other-regarding preferences) is not a robust foundation for institutional design since potential negative externalities of opportunistic actions loom disproportionally large

[17] We leave open the question of whether Buchanan was interested specifically in the philosophical problem of moral learning. However, he was keen to emphasize the importance of the constitutional attitude for the stability of the liberal order. Our argument stresses the fact that in order to analyze what makes possible the salience of a constitutional attitude we need an account of moral learning. This allows us to deal (on a more fine-grained level) with individual processes of constitutional attitude development.

[18] In this paper, we do not analyze the behavioral disposition of politicians and how to constrain their self-interest. This would be the traditional public choice perspective. In contrast, we want to motivate a slightly different question: how should institutions that regulate *interactions among citizens* be designed if we are aware of the fact that they can lead to the crowding-out/in of citizens' constitutional attitude? We think this question becomes particularly important in cases where institutions are built on the assumption that citizens are *mainly* motivated by their rational self-interest.

(Brennan & Buchanan, 1983). The underlying rationale is an argument from prudence: worst-case scenarios must be ruled out. This line of thinking captures Hume's maxim:

> … that in contriving any system of government … every man ought to be supposed to be a *knave* and to have no other end, in all his actions, than his private interest. By this interest we must govern him, and, by means of it, make him, notwithstanding his insatiable avarice and ambition, cooperate to public good. (David Hume, Essays: Moral, Political, and Literary. 1742/1987, p. 42)[19]

Buchanan follows Hume's maxim and affirms that laws and regulations need to be built upon institutions that 'keep governments as well as citizens within limits' (1979b, p. 58), following the mantra: good laws are a substitute for good citizens. The problem with this account is that it does not directly address Buchanan's conundrum why people should engage in the exercise of advancing existing rules of the game in the first place (see Section 2). Moreover, there is a rich literature in behavioral economics which suggests that rules based on punishment and reward can actually lead to a crowding-out of intrinsic moral motivation under certain circumstances (for an overview, see Bowles & Polania-Reyes, 2012).[20]

The idea of Hume's maxim can be contrasted with the Aristotelian understanding of the purpose of the law and indeed of any constitutional order. Aristotle states:

> […] the legislator makes the citizens good by habituating them, and this is the aim of every legislator; if he fails to do it well he misses his goal. Correct habituation distinguishes a good constitution from a bad one (EN, 1103b 5-10).[21]

Following Aristotle, institutional arrangements should emphasize a process of 'inculcating habits', i.e. teach and place reliance on individuals' capability of moral learning. According to this view, laws can help people become better practical reasoners. While Aristotle acknowledges that constitutions and laws cannot make people fully virtuous, he still envisages a role for fostering virtue through the legal order. This is because Aristotle takes for granted that the

[19] Referring to Smith, Hayek (1948, p. 11) states a similar view:

> There can be little doubt … that Smith's chief concern was not so much with what man might occasionally achieve when he was at his best, but that he should have as little opportunity as possible to do harm when he was at his worst.

[20] Traditionally, economists assume that when individuals face material incentives, they do not affect the interaction of the elements in the utility function. For instance, consider the standard function of Section 2: $U_i(\pi_i, R_i) = f_i(\pi_i) + \theta_i g_i(R_i)$. In this case, a variation in the satisfaction of self-regarding utility $f_i(\pi_i)$ does not influence the level of other-regardingness $\theta_i g_i(R_i)$. The two components are *separable* and *additive*. However, empirical evidence indicates that material incentives affect the interaction between self-interested motives and moral motivation. Particularly, incentives can have perverse effects on the salience of moral preferences in that they crowd out intrinsic, non-instrumental motivation (Bowles, 2016, ch. 3).

[21] In this and other references to Aristotle we use the standard abbreviations and the Bekker numbers. We follow closely Terence Irwin's translation of the *Nicomachean Ethics* in this passage.

written and unwritten laws of any social order shape the moral outlook of its members. Consequently, a citizenry will only function adequately when individual virtues are fostered by its constitutional rules. On this view, formal and informal institutions fulfill more than regulatory functions; they have an important effect (positive or negative) on different forms of social interaction and thus on the capacities of practical reasoning of the agents that inhabit them.

## *Institutional elements that foster a constitutional attitude: public discussion and political participation*

Rule-shaping behavior is costly for the individual in terms of time and effort; it is also inherently an activity with public good characteristics since there is typically no rivalry in rule consumption and it is hard to exclude single constituents once a rule is implemented. Empirical evidence suggests that citizens' willingness to overcome the free rider problem and contribute to the provision of public goods (such as rule-making) is higher when they are treated as moral subjects who are given the opportunity to contribute to an ongoing public discourse (Frey, 1997; Ostrom, 2000; Bowles, 2016; Hargreaves Heap 2020).[22] This supports the idea that individuals' constitutional attitude is a resource for rule-making that can be mobilized through *informal discussions* and *formal participation* in political processes.

Experimental evidence suggests that *discussion* facilitates experiential moral learning and increases cooperation with others in situations where individual and group interests diverge (Sally, 1995; Balliet, 2010). As Levy and Peart (2017, p. 45) explain,

> parties may begin as concerned only with the self or their group, [but] they come to perceive their interconnectedness in the course of discussion. A well-governed society requires that people enter into the spirit of laws and cooperate when their material interests urge them in another direction.

Contrary to the idea that the convergence of expressed values of multiple individuals is simply the result of herd behavior or opinion leadership, Levy and Peart (2017, p. 32) clarify that public discussion is a means 'by which our *imaginative capacity* is stretched to include at least partial understanding of

[22] We are aware that Buchanan was sympathetic to the idea of 'democracy as government by discussion' and acknowledged that preferences can and do change in the course of the political process (Buchanan, 1954). However, we side with Emmett (2020, p. 305) who claims that Buchanan never systematically incorporated an account of public reasoning into his constitutional economic thinking but ultimately retained the idea of rational, autonomous individuals: 'Individuals are at the heart of his usage: choosing their values, making up their minds, agreeing, and eventually voting.' Hence, Buchanan ascribes to a cognitivist model of moral learning; he doesn't consider public discussion or political participation as key drivers for the inculcation of civic virtues in individuals. For a defense of Buchanan, see Levy and Peart (2017, chaps 2–3).

the goals and arguments of others.'[23] In other words, public discussions are places of moral learning where individuals learn to stand back from and reflect upon their own values and desires in light of existing moral norms: 'It is through language, and the exchange of approbation over time, that we come to understand what is generally approved and we try to act accordingly. To the extent that we succeed, *we become virtuous individuals*' (D. M. Levy & Peart, 2017, p. 31 emphasis added).

Besides public discussion, formal channels of participation can enhance individuals' constitutional attitude. Through active participation in an ongoing democratic process, people acquire the knowledge, aptitudes, and skills for that very same process (Macedo et al., 2005; Barrett & Zani, 2014). For instance, participation can be enhanced by institutionalizing citizens' rights to initiate laws that are neglected by legislators and reverse political decisions by means of qualified referenda (Frey, 1997). In addition, the possibility of being engaged in polycentrically (and not centrally) organized communities can lead to local solutions to collective action problems which result in higher levels of rule compliance and civic engagement (Ostrom, 1998, 2000).[24] Ostrom (2000, p. 12) clarifies:

> The policy of assigning all authority to a central agency to design rules is based on a false conception that there are only a few rules that need to be considered and that only experts know these options and can design optimal policies. Our empirical research strongly challenges this presumption. There are thousands of individual rules that can be used to manage resources.

Ongoing opportunities of participation are crucial since individuals are more likely to develop a robust constitutional attitude if they do not only have access to arenas to discuss political matters but also have means to actually shape the rules under which they live (Brady, 1999).[25]

[23] In the context of education, empirical evidence suggests that moderated discussions of current, controversial issues increase students' interest in politics and their skills at engaging with other people. See, e.g. Kawashima-Ginsberg and Levine (2014) and Sherrod et al. (2010, p. 12).

[24] The idea of polycentrism entails that citizens are always part of multiple, overlapping, and nested communities. More generally, Ostrom's work highlights the crucial role of reciprocity and trustworthiness for the solution of social dilemmas (see, e.g. Ostrom, 2009). While it is true that empirical work suggests the importance of generalized trust in overcoming free rider problems, trust can be seen as the facilitator but not necessarily as the key motivational ingredient of mutual, bottom-up rule-making. For instance, one can live in a society with a high level of generalized trust, but still not feel obliged to engage in any rule-making behavior. For the latter, we argue in this section, it is crucial to develop a constitutional attitude through exposure to public discussion and political participation.

[25] This is a point J.S. Mill (1859/2003, pp. 169–170) forcefully makes in *On Liberty*. Mill recommends for citizens to participate in the political process on an ongoing basis:

> as a means to their own mental education – a mode of strengthening their active faculties, exercising their judgment, and giving them a familiar knowledge of the subjects with which they are thus left to deal. This is a principal, though not the sole, recommendation of jury trial (in cases not political); of free and popular local and municipal institutions; of the conduct of industrial and philanthropic enterprises by voluntary associations.

In a similar vein, Hirschman (1985, p. 26) highlights that moral motivation is a predisposition whose instantiation may well increase rather than decrease through use; it is also not a resource that remains intact if it is unused: 'Love, benevolence, and civic spirit … atrophy when not adequately practiced and appealed to by the ruling socioeconomic regime, yet will once again make themselves scarce when preached and relied on to excess.' This is closely in line with the neo-Aristotelian account of moral learning outlined in Section 3. Aristotle's dictum that we become virtuous by performing virtuous acts (see NE 1103a30-1103b5) suggests that virtues are like moral muscles, and as such, can become atrophied if not exercised.

In *Democracy in America*, De Tocqueville (1840/2002, p. 589) makes a similar point when he argues that the continuous participation in the democratic process is the mechanism through which individuals nurture their *interest in* and *appreciation of* general rules that serve everyone: 'political life makes the love and practice of association more general; it imparts a desire of union, and teaches the means of combination to numbers of men who would have always lived apart.' In this sense, the art of political participation inculcates the habits of civic engagement. The development of a constitutional attitude emerges as individuals begin to see themselves not just as separate individuals but as members of the same political community.[26]

## *Incentives and moral motivation can work complementarily*

Before concluding, we want to emphasize the importance of the second part of Hirschman's quote in which he warns that civic engagement can become 'scarce when preached and relied on to excess.' Consequently, institutions, which rely on individuals' moral motivation alone, will likely fail too. Traditional economic incentives and constraints (e.g. taxes, subsidies, bans) are feasible policy tools. In fact, empirical evidence suggests that incentives in form of material payments do not necessarily crowd out intrinsic moral motivation. Bowles (2016, p. 202) presents evidence from Ireland where the introduction of a small tax on plastic bags led to a fall in their usage by 94 percent after just two weeks. In this example, the introduction of the tax was accompanied by a public debate about the environmental influence and social costs of plastic bag usage. *Public discussion* and *active public involvement* led to a broad

The 'mental education' Mill is referring to is

> taking [people] out of the narrow circle of personal and family selfishness, and accustoming them to the comprehension of joint interests, the management of joint concerns – *habituating them* to act from public or semi-public motives, and guide their conduct by aims which unite instead of isolating them from one another. (1859/2003, emphasis added)

[26] For an illuminating discussion of the link between De Tocqueville and insights from modern behavioral economics on endogenous preferences, see Hargreaves Heap (2020).

acceptance of the intervention. In other words, incentives and morals became complements rather than substitutes.

As illustrated by this example, incentives can enhance moral motivation and increase the salience of a social matter. In many areas of social life incentives are necessary to create efficient outcomes (e.g. in the financial market or in the market for consumer goods). These are situation of *choices within given rules* in which the pursuit of self-interest can lead to good social outcomes; moral considerations play a minor role. The problem arises if we create a political order based on the assumption that citizens *always* free ride if they are not constrained by external incentives. Such an order will likely produce negative consequences for citizens' motivation to engage in *choices among rules*. Bowles (2008, p. 1605) concludes that many of the anti-synergistic effects between incentives and moral motivation occur 'because people act not only to acquire economic goods and services but also to constitute themselves as dignified, autonomous, and moral individuals.' When this moral dimension is not acknowledged and rules are designed for 'self-interested citizens,' it becomes plausible that the pervasive presence of economic incentives may undermine individuals' constitutional attitude over time.

## 5. Conclusion

Buchanan argues that individuals need to develop a constitutional attitude to be motivated to design or uphold the rules of a liberal order. Yet, he also identifies 'rational apathy' of people as a constant threat to such attitude. Within the framework of his constitutional contractarianism, Buchanan cannot solve this conceptual conundrum since (a) he does not have a convincing theory of how individuals can develop a constitutional attitude, and (b) his recommendation of designing rules and institutions for 'knaves' enhances the problem in many cases. Focusing on the prevention of opportunistic behavior can come at the cost of crowding out the civic mindedness associated with a constitutional attitude. We argued in this paper that a neo-Aristotelian perspective which highlights the relationship between social institutions and moral learning can enrich Buchanan's political economy. Motivated by the neo-Aristotelian perspective and based on empirical evidence on moral learning, we identified two important channels that can contribute to the development of people's constitutional attitude: public discussion and political participation.

In Buchanan's institutional analysis, individuals must be seen as autonomous (and largely independent) moral agents. In doing so, Buchanan doesn't sufficiently account for a central insight of his teacher, Frank Knight (1923, p. 585), who states that 'the economic order does far more than select and compare wants for exchangeable goods and services: its activity extends to the formation and radical transformation, if not to the outright creation; of the wants themselves.' In this paper, we discussed evidence that shows how

institutionally dependent moral behavior is. The same person can behave opportunistically or not depending on the social and institutional environment she finds herself in. Incorporating insights on the reflexivity of moral motivation and institutional structure into Buchanan's theoretical framework is necessary to answer the question of how his political economy project can secure the necessary constitutional attitude of its citizenry.

Evidently, an institutional regime that focuses solely on deliberation, goodwill, and intrinsic motivation is equally flawed. Incentives do work in many cases. They can lead to crowding-in effects when individuals have participatory rights and perceive the interventions as fair and productive. Therefore, we think that a more nuanced approach is needed. One that escapes the dangers inherent in either extreme: neither a constitution for 'knaves' nor 'saints' will work. A viable institutional order must strike the right balance between the Humean deterrence of free riders via economic incentives and the Aristotelian legislator who emphasizes individual capabilities of moral learning. A neglect of the moral dimension will lead to an over-optimism regarding the use of legal punishment regimes in producing effective social cooperation since it does not take the moral motivations of individuals as constraints on legal solutions seriously (Gaus, 2018).

Due to limitations in scope, this paper has only alluded to the practical question about which institutions and policies could foster citizens' constitutional attitude. We outlined conceptually what type of institutional thinking is needed to circumvent some of the pitfalls of Buchanan's constitutional political economy. In this regard, we think that Buchanan's framework would benefit from further studying the relationship between economic incentives and civic virtues to avoid the danger of formulating institutional recommendations based on misspecified models. In order to do so, public choice scholars interested in constitutional political economy need to engage in more untraditional theorizing and data gathering. Besides the direct price effects of different institutional regimes, economists should acknowledge the indirect effects of incentives on intrinsic motivation and moral preference formation when engaging in comparative institutional analysis. This will require the careful study of local moral customs (Kranton, 2019; Hoff & Stiglitz, 2016). The combination of a sociologically informed neo-Aristotelian account of moral learning with insights from behavioral economics provides a fruitful basis to disentangle this complex relationship. Ideally, this interdisciplinary dialogue will lead to the identification of concrete institutional regimes that foster individuals' capability to develop a robust constitutional attitude.

In this paper, we identified individuals' capabilities of moral learning and practical reasoning as proxies for a constitutional attitude. While this interpretation is in line with Buchanan's call for ethical precepts (1989), it reveals a tension in his oeuvre: on the one hand, Buchanan sympathizes with a nonteleological perspective in his analysis of market processes (see, e.g.

Buchanan, 1982). On the other hand, he shows elements of a teleological perspective when it comes to individual processes of character formation (see, e.g. Buchanan, 1994). Resolving this tension lies beyond the scope of this paper: we simply took Buchanan's teleological call for a constitutional attitude seriously and asked what type of institutional thinking such a perspective would support. We invite future research to address the important question whether the facilitation of a constitutional attitude comes at the expense of inhibiting citizens' freedom to become whom they want to become.

We have argued that Buchanan's framework would benefit from a neo-Aristotelian perspective in order to analyze successfully how different institutional structures can either undermine or foster the development of moral character, and thus the possibility of developing a constitutional attitude in the context of a free society, an attitude on which the stability of the liberal social order depends. Indeed, we agree with Brennan and Hamlin (1995, p. 39) who state that the 'question – whether, to what extent, and how, virtue-economizing institutions undermine public-interest motivations – is of fundamental interest, and indeed is perhaps the single most important challenge to the constitutional political economy enterprise.'

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No potential conflict of interest was reported by the author(s).

## Data availability statement

Data sharing is not applicable to this article as no new data were created or analyzed in this study.

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