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Fearing Freedom: The Intellectual and Spiritual Challenge to Liberalism

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> The vision of the eighteenth-century philosophers which enabled them to describe a social order that did not require the centralized direction of man over man may yet stir excitement. *Free relations among free man* – this precept of ordered anarchy can emerge as principle when successfully renegotiated social contract puts "mine and thine" in a newly defined structural arrangement and when the Leviathan that threatens is placed within new limits.
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> -- James Buchanan (1975, 227-28, emphasis original)

In "The Soul of Classical Liberalism" (2000), James Buchanan argues that modern advocates of the liberal order must move beyond the mid-20th century project of "saving the books" and "saving the ideas" and instead embrace the challenge of "saving the soul" of liberalism. His argument is fairly straightforward: the vast majority of modern defenders of classical liberalism are economists, and they base their defense on the logic and evidence that as scientific economists they work with. But these insights understandably do not translate easily into the popular imagination. The prospects for establishing a genuine liberal order, however, turn on capturing the intellectual imagination of a significant segment of the population. I am in complete agreement with Buchanan, and I myself had a similar experience that he had in experiencing a "mind-quake" when introduced to the vision of the spontaneous ordering of the free enterprise market economy as a student. Once that vision was in my head, in retrospect, it is hard to imagine any other path that I could have pursued professionally. However, like Buchanan, I do also wonder why

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so few of my classmates who listened to the same lectures and read the same books had the same reaction to the material.

The expectation, Buchanan tells his reader, that the teacher of economics could effectively communicate the principles of economics to the broad class of the intelligentsia as well as the masses was a grounded in hubris and folly. Instead of limiting our articulations to the teachings of a science and stressing policies that should be supported due to our enlightened self-interest, he argues, we need to provide a coherent "vision" of a social system that is simultaneously romantically, aesthetically, and morally pleasing. The liberal promise of individual autonomy, generalized economic prosperity, and domestic and internationally peace, of course, can (and has) provide such a coherent vision. As Deirdre McCloskey (2006; 2010) has recently stressed, where bourgeois virtues are respected and bourgeois activities are attributed dignity in the popular imagination, modern economic growth is made possible. Where the popular imagination rejects such virtues and despises such activities poverty, ignorance and squalor follow for the masses. Yet, we must still be struck by the reality that very few folk songs are written as odes to commerce and capitalism, and many are written to celebrate class struggle and socialism.

Liberalism, at least economic liberalism, has an image problem. And Buchanan wants those who value liberalism to address this problem head-on, rather than continuing to deny its existence. In order to embrace a challenge, we must first fully understand it. To do that, I examine the themes Buchanan raises in three essays that focus our attention on the critical issues. Chronologically, they are "The

Potential and Limits of Socially Organized Humankind" ([1988] 1991); "The Soul of Classical Liberalism" (2000); and "Afraid to Be Free" (2005). The underlying economic analysis in all three essays is Buchanan's fundamental point that the same players acting under different rules will produce different games. The explanatory focus is on the rules of the game and their enforcement, rather than behavioral assumptions of the actors under examination *per se*. But it should be remembered at all times in the discussion that a Buchanan inspired political economy treats the actors as analytically egalitarian, insists on behavioral symmetry across the different realms, and denies to the human actors under investigation in the context of market, legal, political social processes any notion of omniscience, benevolence, and omnipotence. These are "given" in Buchanan's approach to political economy and social philosophy.

In these three essays, however, Buchanan pushes the analysis in novel directions. In Buchanan ([1988] 1991), he raises the issue of *justice*; in Buchanan (2000) he raises the issue of *vision*; and in Buchanan (2005) he raises the issues of *liberty and responsibility*. In what follows, I will discuss each of these critical issues and then offer a suggested reconstruction of Buchanan's political economy and social philosophy that can embrace the challenges and provide a coherent vision of a society of free and responsible individuals. In such a society people have the opportunity to: participate in the ongoing conversation of democratic deliberation that constitutes collective action in their society; prosper in a market economy based on profit and loss; and live in, and be actively engaged with, caring communities. A *free society* I will argue is a *good society*, and a self-governing

citizenry must be willing to embrace the 'cares of thinking' and 'troubles of living', as Tocqueville ([1835-40] 2003) stressed so many years ago. But an appropriately structured political economy of a free society – one that exhibits neither dominion nor discrimination in human relationships – will not be one that individuals should fear, and it does constitute an inspiring vision that can capture the imagination of the population.

II. Was Justice a Missing Component in Classical Liberalism?

"The great scientific discovery of the eighteenth century," Buchanan ([1988] 1991, 244) argues, "out of which political economy (economics) emerged as an independent academic discipline, embodies the recognition that the complementary values of liberty, prosperity, and peace can be attained." As long as the state provides the appropriate laws and institutions—the rules of the game and their enforcement—individuals can be left alone to pursue their own projects while realizing the values of liberty, prosperity and peace through mutually beneficial exchange with one another.

The classical liberal ideal was never fully realized because while the intellectual vision captured the essential role of the state in providing the required infrastructure, there was a lack of attention to the distinction between the political structure and political intervention into the socioeconomic game. As a result, the structural constraints required to limit the negative consequences of politicized interventions were not established. Within a few generations the classical liberal ideal failed to inspire.

Buchanan postulates that critical to the failure to continually inspire was that the listing of liberty, prosperity, and peace was incomplete because it omitted justice. The injustice of capitalist distribution inspired instead the socialist vision. The idea of justice, in both its Aristotelian senses of commutative justice and distributive justice, capture the intellectual imagination. The classical liberal vision is one consistent with commutative justice (equity in the process), but its relationship to distributive justice (equity in outcomes) has always been dubious at best. Note how the failure to distinguish between the structure of rules and the politicized interventions into the game results in the blurring of the distinction between commutative and distributive justice in practice. If the political infrastructure permits differential treatment in the political process such as special interest group politics and rent-seeking behavior, then the fairness of the structure itself is vulnerable to challenge, and a demand for a more equitable distribution of resources gained in that flawed process seems natural.

The incompleteness of the classical liberal infrastructure permitted an alignment between those with a justice-driven moral purpose and the interest-motivated constituencies, and it resulted in discriminatory politics that erodes the rule of law. In *The Limits of Liberty* (1975), Buchanan argued that the public capital embodied in the protective and productive functions of government can be eroded through the redistributive politics of the "churning state" (see also DeJasay [1985] 1998). The constitutional puzzle from this perspective is one of empowering the protective and productive state without unleashing the redistributive state. But this puzzle cannot be solved as long as the question of justice is not met head on, and

instead those with an interest-driven motivation can align with those with a moral-driven motivation to challenge the legitimacy of the economic and social order.

Effectively countering the distributive justice critique of the market order requires both a reinvigorated defense of the constitutional order of limited government and an appropriate understanding of the operation of the market economy itself. Distributive justice within the context of the ongoing market process cannot be viewed as a question of "just division", but instead must be understood as emergent from the pattern of exchange, production and resource use. There is no "fixed pie" to be divided up among the participants; the process of producing the pie—the exchange relations among participants and the resource use based on buying decisions within the process—determines how big the pie grows. The size of the economic pie, in other words, is not invariant to the way "we" choose to divide up the pie. Policy makers could, if they so desired, decide that they will confiscate the existing stock of oil reserves and it would not impact the *current* supply of oil. But it would have a drastic impact on the future exploration and discovery of oil reserves.

Economic theory *per se* must remain silent on the question of whether profits are deserved or not, but it speaks quite clearly and loudly about the consequences of popular answers to that question. The political economist must take those consequences into account when offering structural reform suggestions. Political machinations that undermine the generality of the rules, and instead yield benefits to some at the expense of others must be constantly identified and resisted in a renewed defense of the justice of the classical liberal order. Only by so doing will

the 21st century political economist complete the program of his 18th century counterparts, and demonstrate the logical affinity between liberty, prosperity, peace and justice.

III. Can the Invisible Hand Inspire a New Generation?

The challenges that Buchanan identified for the future of classical liberalism included not only those related to the infrastructure and the question of justice, but also the piercing of the "romantic vision" of politics with a scientific understanding of the reality of ordinary politics and an appreciation of the workings of Adam Smith "invisible hand" of the market order. Only in this manner, can the political economist convince fellow citizens of the relative inefficiency of ordinary politics, and demonstrate the relative efficiency of the market order.

Ludwig von Mises ([1949] 1966, 692) presented the dilemma that 20th century economists and political economists faced due to the romantic assumptions of omniscience and benevolence on the part of the state. That the state should be in control of the utilization and distribution of resources logically followed. Mises ([1949] 1966, 688) points out that:

> This inference became logically inescapable as soon as people began to ascribe to the *state* not only moral but also intellectual perfection. The liberal philosophers had described their imaginary state as an unselfish entity, exclusively committed to the best possible improvement of its subjects' welfare. They had discovered that in the frame of a market society the citizens' selfishness must bring about the same results that the unselfish state would seek to realize; it was precisely this fact that justified the preservation of the market economy in their eyes. But things became different as soon as people began to ascribe to the state not only the best of intentions but also omniscience. Then one could not help concluding that the infallible state was in a position to succeed in the conduct of production activities better than the erring individuals. It would avoid all those errors

> that often frustrate the actions of entrepreneurs and capitalists. There would no longer be malinvestments or squandering of scarce factors of production; wealth would multiply. The 'anarchy' of production appears wasteful when contrasted with the planning of the *omniscient* state. The socialist mode of production then appears to be the only reasonable system, and the market economy seems the incarnation of unreason.

In the post-socialist political economy of the 21st century, the socialist god may in fact be dead, but an appreciation of Smith's 'simple system of natural liberty' is far from possessing a general consensus among the intelligentsia. Our dilemma today is as follows. We have been somewhat successful at challenging the efficacy of centralized state control of production, reflecting a mild success at pecking away at the romantic assumptions of benevolence and omniscience. That said, the modern classical liberal economists significantly underestimated how the 'churning state' is able to harness the morally-driven philosophical critique of capitalism in order to serve special interest group motivations. Milton Friedman's 'iron triangle' means that there will always be a significant resistance to classical liberal reforms that must be taken into account in any of these discussions of the transformation of politics (Friedman and Friedman 1983, 41-51). There is, Friedman argued, an asymmetry between the resistance to increases in the size of government and to decreasing it. The constituency of beneficiaries of programs, politicians, and bureaucracies align to assure that efforts to dismantle programs face much stronger resistance than efforts to create new programs or expand existing programs.

The rhetoric and reality of the financial crisis of 2008 only reinforced the lack of faith in laissez-faire. Rhetorically, blame has been inappropriately placed on the unhampered market place, when the reality is that government policies that disproportionately favored some constituencies and sheltered them from the self-

regulation of the marketplace were the cause. If policies that privatize profits but socialize risk are in place, nobody should be surprised that market participants will respond by assuming unsustainable levels of risk while earning large returns in the gamble even after the losses are accounted for. Gambling with other people's money is always in the interest of the gambler. Instead of focusing our analytical attention on the weaknesses in the institutional structure that permitted this predictable behavior to emerge, our collective attention has been on the behavior itself – as if it was solely a consequence of moral shortcomings associated with those in finance and commerce more generally. The intellectual challenge for the 21st century classical liberal is great. But with great challenges comes great opportunity.

The public debt crises in Europe as well as those facing many US states, such as California, highlight the reality that the current approach to spending without paying cannot continue indefinitely. The public conversation must turn away from political wrangling over 'austerity' measures, and grapple seriously not just with questions of governmental scale, but more importantly governmental scope. For classical liberals this means switching the conversation from 'starving the beast of resources' to 'starving the beast of responsibility'. As the conversation turns to the appropriate role of government in a society of free and responsible individuals, the only way that the argument can turn in favor of the system of natural liberty is if there is "a generalized willingness to leave things alone, to let the economy work in its own way, and outside of politicized interference" (Buchanan [1988] 1991, 248). The populace must regain a faith in the laissez-faire principle of classical liberal political economy in its finest moments.

Our modern experience with the internet, with technological developments in general, with global commerce and the international division of labor provide ample material to build a reinvigorated and intellectually attractive image of the spontaneous order of economic life, and the simultaneous achievement of liberty, prosperity, peace and justice. The efficiency of the market order, and the ongoing march of technological progress, are not due to postulated perfection of man and/or the market as textbook economics is often portrayed as providing, but is instead due to the very imperfections of man in his seeking improvements, and to the continual *becoming* of the emergent market order (see Buchanan 1964, and 1982). Today's inefficiency is tomorrow's profit opportunity for the entrepreneur who can act on it to eliminate the identified inefficiency. The old and stale debate of the 20th century that moved through the years from perfect market versus perfect state, to imperfect market versus perfect state, to imperfect market versus imperfect state, must be recast. First, the role of the government in economic affairs should be at best focused on the institutional infrastructure – the rules of the game and their enforcement. Conceptually, politics is to be limited to questions about the appropriate structure of government. Policy, by which is meant politicized choice within the rules, must be significantly restricted to avoid the very churning state machinations discussed above. Voluntary agreement and freedom of association must be permitted to work themselves out through time. Second, the power of the market to marshal the ordinary motivations of individuals and lead them to realize the benefits of social cooperation under the division of labor must be understood by a significant portion of the population.

One of the great scientific truths of the "invisible hand" is that the participants do not have to grasp (in fact cannot grasp) the overall operation of the system, but only are guided by their own private interests in particular contexts. But it may very well be the case that while we don't have to understand in order to have and benefit from the spontaneous order of the free market economy, a significant portion of the general public might need to grasp the scientific principles and the aesthetic beauty of the "invisible hand" in order for it to be sustained in the face of ordinary political pressures for expediency. This is where the modern world should be the greatest aid to the economic teacher because the world of the internet that we experience every day in so many direct ways enables us to realize social cooperation through exchange relations with folks from distant lands who do not speak the same language, do not follow the same religion, and possess different conceptions of the good and the just. The anonymous cooperation that defines the marketplace has never been so evident and yet so directly experienced as it is in the smorgasbord that is the world-wide web.

IV. Should We Fear Freedom?

Cultivating a generalized willingness to leave things alone among the informed population is only possible with a citizenry capable of true self-governance in the Tocquevillian sense. Unless the citizenry is willing to embrace the 'troubles of thinking', and the 'cares of living' any hope for wide-spread acceptance of a visionary renewal of the laissez-faire principle will remain beyond grasp.

James Buchanan ([1979] 1999, 259) once argued that "man wants liberty to become the man he wants to become." But what if man shies away from liberty rather than embracing the agony of choice, because he would rather enjoy the leisure of security from choice. The problem that confronts the modern classical liberal, Buchanan (2005) postulates, is not the managerial socialism of the 20th century, nor even the Nanny State of paternalistic socialism, but the desire on the part of the population to remain in the infantile state of demanding a parent to protect them from the vagaries of life and provide them with economic security. Vincent Ostrom (1997) focused on this problem as one of the factors that threatens the operation and continuation of well functioning democratic societies. The key source of vulnerability for viable democratic living is how the "sickness in the state" resulting from the unconstrained machinations of interest-driven politics can bred a "sickness in the people" as the self-governing capabilities of the citizenry become atrophied.

The classical liberal vision is one of a society of *free* and *responsible* individuals. For our purposes, it is important to stress both the freedom of the individual to choose a path of life of their own volition, and the acceptance of the burden of the responsibility of the choices made. Of course it is hard for any of us in the professorial class to wax on about the benefits of taking on the responsibility of steering a course through the sea of economic possibilities as we have the privileged position of tenure while being engaged in scientific and creative pursuits with almost complete autonomy. In short, our lives are unrealistic as compared to the everyday life of our fellow citizens.

Can you imagine the lack of economic dynamism if everyone in the economy had the protected life of a tenured university faculty member? We don't have to even imagine such a world because in many ways the European labor market has sought to institutionalize something along these lines for the better part of the past 50 years with the results in the PIGS countries having consistent and persistent double-digit unemployment, which is creeping close to 30% in both Greece and Spain. As Casey Mulligan (2012) has recently argued, if policies raise the cost of hiring, don't be surprised when less hiring goes on. Policies designed to protect individuals from competition in the labor market, and to secure against all the vagaries of economic change, raise the costs of labor and provide a new layer of obstruction to economic progress.

The policy issues just raised highlight some perverse consequences regarding economic outcomes, but there are also issues of autonomy and dignity associated with individuals accepting the burden of responsibility. As Buchanan (2005, 24) argued: "The thirst or desire for freedom, and responsibility, is perhaps not nearly so universal as so many post-Enlightenment philosophers have assumed. What share of persons in varying degrees of bondage, from slavery to ordinary wage salary contracts, really want to be free, with the accompanying responsibility for their own choices?" If the number of people who are willing to shoulder the responsibility for their own choices is a distinct minority, then the institutional infrastructure of a classical liberal order will be deemed inadequate by the majority. "The lacuna in classical liberalism," Buchanan (2005, 27) argued, "lies in its failure to offer a satisfactory alternative to the socialist-collectivist thrust that reflects the

pervasive desire for the parental role of the state. For persons who seek, even if unconsciously, dependence on the collectivity, the classical liberal argument for independence amounts to negation."

But the classical liberal need not limit their vision to "leave me alone", and can extend to a strong sense of community and even dare I say collective purpose. The classical liberal ideal is not just a society of free and responsible individuals who have the opportunity to prosper through participation in a market economy based on profit and loss, but also envisions those same individuals as living in, and actively engaged with, caring communities. It is these caring communities, as Richard Cornuelle ([1965] 1993) repeatedly argued that allow a society of free individuals to give concrete meaning to the idea that the state can be starved of responsibility because private members of society individually and collectively can work to fill the gap. In other words, we don't need to fear freedom, but rather to embrace freedom, including the freedom of association to join communities of varying degrees of civic engagement.

V. The Importance of the Question of Anarchy

James Buchanan considered himself a "philosophical anarchist," because of his normative affinity with a philosophy of complete autonomy of the individual. Theoretically, Buchanan believed in the right of secession down to the level of the individual. But, practically, he demurred, because our social existence requires collective action.

Buchanan lumped all anarchist theories with other "romantic" political theories. And, historically contemplated, clearly Buchanan was right in this judgment. Anarchistic political thought from Godwin to Bakunin was romantic in precisely the sense Buchanan intended -- requiring a perfecting transformation of humanity for the social system to work. However attractive such theories are philosophically, they must be rejected due to need for hard analytics to access alternative institutional arrangements in diverse human societies.

Buchanan (1975) turned his attention to exploring the escape through a constitutional contract from the Hobbesian jungle that practical anarchy would condemn us to. Once the escape has been achieved, Buchanan's attention turns to how we can avoid the collapse into Leviathan. Through successful collective action at the constitutional level a state is constituted, but now comes the task of institutional design such that the protective and productive state are operating effectively without unleashing the negative force of the redistributive state. If the redistributive state evolves unchecked, we devolve into the churning state -- where interest groups are pitted against each other in a war of all against all in zero-sum games. Buchanan would like to see a world of nonzero-sum games -- only positive-sum games.

I have gone into this background because it is my assessment that Buchanan's normative caricature of anarchism results in a blind spot in traditional classical liberal political economy. Since the financial crisis of 2008, Buchanan pinpointed the problem as one of an overly optimistic faith on the part of modern Chicago economists that market behavior can check itself without a proper

framework of rules to discipline the behavior of market participants. There is much to be said for Buchanan's position, and we will provide a much better analysis of the financial crisis if we move the analysis to the level of rules and the institutional framework. Economic analysis is ultimately about exchange and the institutions within which exchange takes place. As Buchanan wrote in *The Demand and Supply of Public Goods*: "Appropriately thorough analysis should include an examination of the institutional structure itself in a predictive explanatory sense. The economist should not be content with postulating models and then working within such models. *His task includes the derivation of the institutional order itself from the set of elementary behavioral hypotheses with which he commences*. In this manner, genuine institutional economics becomes a significant and an important part of fundamental economic theory." (Buchanan [1968] 1999, 5, emphasis added)

Thus an appropriately thorough institutional economics would not just stress the necessity of the framework, but explain both the origins of the framework and the mechanisms in operation to sustain the framework. Here I think the pigeonholing of "anarchism" into the normative camp misses the critical insights that can be learned for our constitutional analysis from the empirical project of the positive political economy of anarchism (or 'anarchy without romance').

First, we have a wealth of information about the institutional transformations that took place in medieval societies as we moved from personal exchange to impersonal exchange. (see, e.g., the work of Avner Greif 2006; also see Benson 1990) This work—which explores institutional prerequisites for the birth of modern economic growth—emphasizes self-enforcement and self-regulation,

evolutionary experimentation with a diversity of rules, and some mix between top-down and bottom-up rule design and establishment. The state is no doubt a major player, but the state is not a single unified entity either.

This point actually had a significant intellectual influence on Buchanan's work in public finance, as evidenced not only in his 1949 "A Pure Theory of Government Finance", but in subsequent works that reflect the influence of the Italian public-finance theorists on his work after his Fulbright year (1955-56). Public economics must proceed, according to Buchanan, without the delusion of state omniscience and benevolence. "Real rather than idealized politics, with real persons as actors -- these were the building blocks in the Italian constructions, whether those of the cooperative-democratic state or the ruling class-monopoly state." (Buchanan [1986] 1999, 17)

Second, the positive political economy of anarchism can excite the intellectual imagination of the next generation of 21st century classical liberal political economists. Questions of anarchy can push the limits of what it means to be free and give us an appreciation of the self-governing capacities of individuals. In this way, research in the area creates a fruitful connection with the art and science of association and notions of bottom-up constitutional rules that uncover the inspiration and importance of power and voice for citizens. The project is not about "saving the books" or "saving the ideas", but of going onward and upward with the older ideas and making them new and relevant, and in the process taking the ideas developed by Smith, Hayek and Buchanan and pushing them to logical implications that those brilliant individuals were unwilling to take them. We must recognize that

the noble and inspiring projects of Adam Smith in the realm of theory and James Madison in the realm of action have failed to sustain the intellectual interests of subsequent generations. The project needs to be recovered in order to be reconstructed, but if left in the old formulation will confront the same limitations that they faced the last time they proved to be so vulnerable to intellectual critique and political manipulation.

A critical point of emphasis in Buchanan's work is that public finance implies a political theory. Most public economists engage in their work with only an implicit recognition of the underlying political theory. Buchanan wants his fellow public economists to make that recognition explicit. His political theory was a version of contractarianism. The leap out of the Hobbesian jungle was accomplished through a social contract. In his stylized treatment, Buchanan is forced to turn a blind eye to the myriad ways in which individuals and groups can turn situations of conflict into opportunities for social cooperation.[1] Instead, he produces a stylized analytical "history" of freedom in constitutional contract and the structural organization of government that in many ways over-theorizes the social contract and under-"histories" the way in which rules are subjected to trial-and-error as conflict-resolving mechanisms within and between groups.

[1] Consider, for example, the important passage in *The Calculus of Consent* ([1962] 1999, 81) where Buchanan and Tullock explicitly state: "Therefore, our analysis of the constitution-making process has little relevance for a society that is characterized by a sharp cleavage of the population into distinguishable social classes or separate racial, religious, or ethnic groupings sufficient to encourage the formation of predictable political coalitions and in which one of these coalitions has a clearly advantageous position at the constitutional stage." But as I will argue, it is precisely this sort of environment that is most relevant for modern political economy to grapple with, and not the stylized analytical exercise of producing a constitutional-level agreement from behind a veil of uncertainty -- though I will argue that Buchanan and Tullock are underselling the contribution that they have to offer to the exercise of constitution-making from the bottom up and in a conflict prone world.

Buchanan does this for an important reason -- he distinguishes between the games we play within a given set of rules and the choices we make over the rules of the game. He has a great analytical "faith" that within the appropriate set of rules the order that will emerge within the process of its emergence will in fact be a socially desirable one. The market process exhibits a strong tendency toward (1) realizing the mutual gains from trade, (2) inducing the innovations that will result in least-cost technologies being utilized in production, and (3) responding to the diverse demands of the most willing consumers by providing them with the goods and services they desire when they desire them. In short, within the right institutional framework, the economic forces at work tend to continuously agitate action until exchange efficiency, production efficiency, and product-mix efficiency emerge. To deny this is to deny the fundamental logic of the economic way of thinking.

While not denying this strong tendency, and in fact relying on it, Buchanan has put the emphasis on the activity of the market that brings about that tendency -- the dynamic competition and entrepreneurial adjustments, the learning and adaptation to changing circumstances, the very *becoming* of the competitive market process. He focused his attention on the reconciliation process among diverse market participants, the working out of their differences through exchange. Consider closely the argument Buchanan provides in "What Should Economists Do?" (1964) or much later in "The Market as a Creative Process" ([1991] 2000 with Viktor Vanberg). The market has no grand teleology toward which it is heading, though its participants certainly do. The order of the market is indeed an emergent

order. Yet the market is not chaotic, but possesses the strong tendency toward realizing the gains from trade and innovation, and producing social cooperation under the division of labor.

The fundamental question that must be raised is one of application of the rules-selection process to the choice among frameworks of rules themselves. I argue that in his efforts to reinvigorate classical liberal political economy, Buchanan failed to incorporate the scientific knowledge that we have learned from the historical evolution of rule regimes from medieval times, and the emergence of capitalism. Of course, for the operation to take place we must recognize that there is some level at which meta-rules are in operation. For Europe, for example, it has been hypothesized that the lack of a unified empire like the ones in Russia or China resulted in a healthy competition between the decentralized states, enabling the birth of modern capitalism. (see, e.g., Rosenberg and Birdzell, 1987) Russia and China no doubt had political competition going on, but the meta-rule situation of a unified empire meant that the competition took a different form from the trial-and-error policies of economic freedom that was experienced in divided Europe. In failing to incorporate this historical knowledge into his account, Buchanan missed the opportunity to fully learn from the empirical puzzle of failed and weak states, and transitioning economies. It is precisely situations where the rules of the games are up for grabs that the task of the political economist must include "*the derivation of the institutional order itself from the set of elementary behavioral hypothesis*" (Buchanan [1968] 1999).

By divorcing the constitutional project from the empirical puzzle, Buchanan was able to develop a rational-choice model of rule-making with choosers who are devoid of their humanity not through the typical modeling exercise of omniscience, but through an atypical move of depriving actors of concrete incentives through the veil of uncertainty. What if, instead, we must examine constitution-making in a world of diverse populations (heterogeneous agents), in large-group settings, and perhaps in a situation defined by recent and deep conflicts? This is the world that political economists have been addressing in the postsocialist context, in the postwar context, in the African, Latin American, and Middle East context. Conceptually, constitution-making is an exercise of choice over the rules by which we will play the social game. Theoretically, it makes sense to think of justness as fairness, and thus we strive for rules that permit neither dominion nor discrimination.

Anarchy can be read as synonymous with chaos, or absence of law, in which case its operation depends on either the transformation of humanity or the normative embrace of nasty, brutish and short existence. This is how Buchanan read those who sought to discuss endogenous rule-formation. But the "economics of anarchy" literature can proceed along a different line than which either Buchanan and Bush (1972) took—or Friedman (1971), or even more recent work by Hirschleifer (1995) or Dixit (2004). Research on the positive political economy of anarchism simply means the theoretical and empirical discussion of the endogenous formation of rules of the game in the absence of monopoly provider of the rules. To assume that we can have a monopoly provider that has the capacity to exogenously

impose rules on the population that reflect the consensus of the governed is as heroic an assumption as any that traditional public-finance theory operates under.

So while Buchanan was not an anarchist and in fact was highly critical of the libertarian anarchist with whom he intellectually engaged, the sort of intellectual reinvigoration of classical liberal political economy he envisioned might require that one take the analytical anarchist turn more seriously. Buchanan didn't see it that way. He extended his fundamental criticism of libertarianism to Hayekian evolutionism in general. There simply is, in his analysis, no processes of selection over the rules within the evolutionary process that would ensure the choice of good rules and the weeding out of bad ones. But he never really engaged the strongest arguments against his position in this regard, as he was content to dismiss the moral theory of anarchism as possessing a certain philosophical desirability but practical shortcomings.

However, his own work, e.g., *Limits of Liberty* (1975), while distancing him from the radical libertarianism of the Murray Rothbard, David Friedman, and even Robert Nozick varieties, nevertheless set the analytical groundwork for later work in "analytical anarchism." It is this work, which provides the theoretical puzzle for collective action, that forms the basis for the "positive political economy of anarchism" as an empirical project in modern political economy. But by remaining blind to this literature and the possibilities it has to offer, contemporary constitutional political economists are missing out on the greatest set of "natural experiments" of the ideas and concepts they work with. As we move onward and upward with the Buchanan project, it is my opinion that work on the endogenous

formation of the rules of the game among large, diverse, and often divided populations must take center stage. "Anarchy," in other words, cannot be dismissed out of hand as a relic of romantic political philosophy, but instead must be embraced as the empirical reality that has formed the basis of some of the most pressing issues in comparative political economy over the past 30 years in non-western societies.

VI. Conclusion

Hayek in his essay "The Intellectuals and Socialism" ([1949] 1998, 128) remarked that:

> We must make the building of a free society once more an intellectual adventure, a deed of courage. What we lack is a liberal Utopia, a program which seems neither a mere defense of things as they are nor a diluted kind of socialism, but a truly liberal radicalism which does not spare the susceptibilities of the mighty (including the trade unions), which is not too severely practical, and which does not confine itself to what appears today as politically possible. We need intellectual leaders who are willing to work for an ideal, however small may be the prospects of its early realization. They must be men who are willing to stick to principles and to fight for their full realization, however remote.

In many ways only Milton Friedman and James Buchanan took Hayek's challenge to classical liberals seriously in the closing decades of the 20th century. Friedman (1980) emphasized the power of the market and the tyranny of controls in his *Free to Choose*, while Buchanan emphasized the freedom that is made possible through constitutional contract in his *The Limits of Liberty*. Both sought to capture the embodied wisdom in the historical practice of *The Constitution of Liberty*, as best exemplified in the UK and the US.

Friedman's challenge to the classical liberals of the 21st century was a practical one. Rhetorically, Friedman argued, the classical liberal political

economists of the 20th century had won the battle of ideas, but in political practice they had lost the battle of implementation. Thus, the challenge was for classical liberals to find in the policy space not only incentive compatible public policies, but incentive compatible *strategies* for implementing those policies. We cannot just wish away the problems that interest-motivated politics presents classical liberals with wishful thinking about the power of ideas to change the world.

Buchanan's challenge is more 'spiritual' than Friedman's, and ultimately, more in line with Hayek's demand that we make the building of a free society an act of intellectual excitement and courage. To him the case isn't just about the ruthless efficiency of the market, but about the vision of society that exhibits neither discrimination nor dominion. Such a society can only be made possible through the establishment of an institutional structure that constrains ordinary politics while also providing the appropriate rules that enable the invisible hand of the market to operate.

'The larger thesis is that classical liberalism," Buchanan (2000, 112) argued, "as a coherent set of principles, has not secured, and cannot secure, sufficient public acceptability when its vocal advocates are limited to the second group. Science and self-interest, especially as combined, do indeed lend force to any argument. But a vision of an ideal, over and beyond science and self-interest, is necessary, and those who profess membership in the club of classical liberals have failed singularly in their neglect of this requirement." Economics alone cannot do the job, but must be joined by social philosophy. Through the interaction between economics and social

philosophy, a conception of the "good society" can emerge to capture the public imagination.

As we move forward with our focus as 21st century intellectuals the reality of failed and weak states, the recent birth of emerging democracies in post-communism, and the emerging rules of a new international economic order all form the context of our time and place. Making the distinction between the two-levels of analysis – pre- and post-constitutional levels – that is the hallmark of the Buchanan approach is a necessary but not sufficient intellectual move. In addition, the 21st century political economist must be unwilling to treat rules and their enforcement as *given*, and instead must focus their intellectual attention on the emergence and establishment of the rules of the game themselves. We can see how institutions transform situations of conflict into opportunities for realizing the gains of social cooperation by witnessing how groups across a variety of countries and cultures engage in bottom-up constitution making to solve their societal problems. We can learn to live better together, and establish a social order that simultaneously achieves liberty, prosperity, peace and justice. Such a vision of the "good society" can, and must, inspire the citizenry not only with the scientific demonstration of the efficacy of freedom, but the aesthetic beauty and spiritual meaningfulness of the extensive social cooperation that are possible among free individuals.

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