

“A Quite Similar Enterprise ... Interpreted Quite Differently”? James Buchanan, John Rawls and the Politics of the Social Contract¹

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In 1965 James Buchanan (1919-2013) and Friedrich Hayek exchanged letters about an article Buchanan had recently published in *Ethics*. In the course of the correspondence, both Buchanan and Hayek expressed their enthusiasm for the recent work of John Rawls (1921-2002). Buchanan wrote: “I agree on the work of John Rawls. Gordon Tullock and I discovered him, or he discovered us, I forget which, shortly after our book was published, and we have since got to know him personally. I agree that he is doing the most interesting work in philosophy and I hope that he has some impact.”²

¹ We are grateful to Max Shock, Thijs Kleinpaste and Robert Cheah for research assistance, to Elizabeth Beckman for help with navigating the Buchanan Archive, to the Leverhulme Trust for funding Ben Jackson’s research at the Hoover Institution Archives, and for comments to Teresa Bejan, Simon Caney, Cécile Laborde, Daniel Luban, David Miller, Sophie Smith, Annette Zimmermann, the editors and reviewers of *Modern Intellectual History*, and the participants at the Historical Rawls conference, Oxford, May 2017. We owe particular thanks to Alan Hamlin for his detailed written comments on an earlier draft.

² James M. Buchanan to F. A. Hayek, 24 November 1965, Folder 14, Box 13, Friedrich A. von Hayek Papers (86002), Hoover Institution Archives, Stanford University (hereafter “Hayek Papers”); James M. Buchanan, “Ethical Rules, Expected Values and Large Numbers,” *Ethics*, 76/1 (1965), 1-13.

A striking aspect of the early reception of Rawls is that he was warmly embraced by figures such as Hayek and Buchanan, who subsequently became famous as the intellectual leaders of the global market liberal revival of the late twentieth century. While Hayek's role in the rise of this "neo-liberalism" has been well-documented, Buchanan was also an influential advocate of restricting the capacity of democratic collective action to regulate the economy and redistribute resources.³ This seems some distance from the more familiar political images of John Rawls as either offering a quasi-Hegelian rationalization of the mid-twentieth century welfare state or a radical departure from it in the direction of equalizing private property ownership or perhaps even socialism.⁴ Yet Hayek remarked that, although he regretted Rawls's use of the term "social justice," Rawls's presentation of principles of

³ Precisely how influential Buchanan was – and how best to understand his approach to democratic theory – has been the subject of considerable debate: Nancy Maclean, *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America* (New York, 2017); Henry Farrell and Steven M. Teles, "When Politics Drives Scholarship," *Boston Review* (30 August 2017), online at <http://bostonreview.net/class-inequality/henry-farrell-steven-m-teles-when-politics-drives-scholarship>; Jennifer Burns, review of *Democracy in Chains*, *History of Political Economy*, 50/3 (2018), 640-8; Michael C. Munger, "On the Origins and Goals of Public Choice: Constitutional Conspiracy?", *Independent Review*, 22/3 (2018), 359-82; Jean-Baptiste Fleury and Alain Marciano, "The Sound of Silence: A Review Essay of Nancy MacLean's *Democracy in Chains*," *Journal of Economic Literature*, 56/4 (2018), 1492-537; Philip Mirowski, "The Eighteenth Brumaire of James Buchanan," *boundary 2*, 46/1 (2019), 197-219.

⁴ G. A. Cohen, *Rescuing Justice and Equality* (Cambridge MA, 2008), 11; Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge MA, 2018), 39-40; Martin O'Neill and Thad Williamson eds., *Property-Owning Democracy: Rawls and Beyond* (Oxford, 2012); William A. Edmundson, *John Rawls: Reticent Socialist* (Cambridge, 2017).

justice as setting out a framework of rules for institutions and action was “more or less what I have been trying to argue.”⁵ In his earlier letter to Hayek, Buchanan recollected that he had been encouraged when visiting London to hear lectures by the sociologist W. G. Runciman on the BBC Third Programme “which accepted without question Rawls’s approach to justice.” “If Rawls’s ideas can begin to affect such men as these,” Buchanan continued, “there is perhaps some hope.”⁶

Buchanan had written to Runciman about the lectures, expressing admiration for his use of the “justice as fairness” framework. Buchanan explained that although he and his co-author Gordon Tullock took a slightly different path from Rawls in their 1962 book, *Calculus of Consent*, “in the final analysis, we reach the same point.” In writing that book, he stressed, “we were not familiar with Rawls’s work, except only incidentally, but since that time we have worked closely with him.”⁷ Indeed, Rawls was even nominated for membership of the Mont Pèlerin Society (MPS) – the invitation-only organization of intellectuals famously convened by Hayek to remake the principles of classical liberalism.⁸

⁵ F. A. Hayek, *Law, Legislation and Liberty*, vol. 2, *The Mirage of Social Justice* (1976) (London, 1982), 100; Andrew Lister, “The ‘Mirage’ of Social Justice: Hayek Against (and for) Rawls,” *Critical Review*, 25/3-4 (2013), 409-44.

⁶ James M. Buchanan to F. A. Hayek.

⁷ James M. Buchanan to W. G. Runciman, 15 July 1965, copy at Box 109, Gordon Tullock Papers (82072), Hoover Institution Archives, Stanford University (hereafter “Tullock Papers”). For Runciman’s use of Rawls, see e.g. W. G. Runciman and Amartya Sen, “Games, Justice and the General Will,” *Mind*, 74/269 (1965), 554-62.

⁸ Rawls was nominated for membership by Milton Friedman in 1968 and listed e.g. on the March 1970 membership list: “Proposals for Membership, September 1968,” Folder 1, Box 44, MPS Papers (81123), Hoover Institution Archives, Stanford University; MPS, “List of Members” (March 1970), Box 58, Tullock Papers, 19. In itself, this is not that significant –

Viewed philosophically, this neo-liberal enthusiasm for Rawls could certainly be argued to rest on a telling underestimate of the egalitarian implications of Rawls's project. But as Barbara Fried has observed, although Rawls is now regarded as offering one pole of a grand political argument between social democrats and neo-liberals, *A Theory of Justice* was composed before it was evident that this would become such a central dividing line in political argument in Western democracies in the 1970s and 1980s. As a result, Rawls himself actually said surprisingly little about the neo-liberal critique of social justice.⁹ Although it subsequently became apparent to later neo-liberals and Rawlsians that their political thought differed in critical ways, a historical account that tracks the emergence of both Rawlsian liberalism and neo-liberalism reveals a more complicated story, in which shared influences and assumptions generated overlapping theories that took time to distinguish themselves from one another.

The relationship between Rawls and Buchanan provides the clearest window into this complex theoretical unravelling, since they not only shared important methodological similarities but also maintained a friendly intellectual exchange across their careers.¹⁰

Buchanan in particular continued to make frequent references to Rawls as a kindred spirit, Rawls did not attend any MPS conferences and he was removed from the membership list by 1971 (Avner Offer and Gabriel Söderberg, *The Nobel Factor: The Prize in Economics, Social Democracy, and the Market Turn* (Princeton, 2016), 272). It was rather an indicator of the esteem in which he was held by leading neo-liberal thinkers. On the MPS, see Philip Mirowski and Dieter Plehwe eds., *The Road From Mont Pèlerin: The Making of the Neo-Liberal Thought Collective* (Cambridge MA, 2009); Angus Burgin, *The Great Persuasion: Reinventing Free Markets since the Depression* (Cambridge MA, 2012), 87-151.

⁹ Barbara Fried, "The Unwritten Theory of Justice: Rawlsian Liberalism Versus Libertarianism," in Jon Mandle and David Reidy, eds., *A Companion to Rawls* (Chichester, 2013), 430-49 at 430-1.

even as the gap between Rawlsian liberalism and Buchanan's own immediate political allies became more visible. In 2005, looking back on his career and his efforts to defend "classical liberalism" as a "realistic utopia," Buchanan said that "in this whole enterprise, I have, from the 1960s, felt a strong affinity for the efforts of John Rawls who was embarked on a quite similar enterprise, although our two efforts have been interpreted quite differently."¹¹

Geoffrey Brennan, a close collaborator and friend of Buchanan's, recollected that at a Liberty Fund conference in 1982 Anthony Flew mounted a fierce attack on Rawls "and was astounded at the severity of Buchanan's response. Buchanan was as defensive of Rawls as he was enraged by John F. Kennedy."¹²

This affinity between Buchanan and Rawls has been noted in passing by a number of commentators, and explored analytically by certain political theorists, but its significance for our historical understanding of both Rawls and Buchanan remains to be established.¹³ In this

¹⁰ A selection of this correspondence has been published in Sandra J. Peart and David M.

Levy eds., *The Street Porter and the Philosopher: Conversations on Analytical*

Egalitarianism (Ann Arbor, 2008), 405-15; David M. Levy and Sandra J. Peart, *Towards an*

Economics of Natural Equals: A Documentary History of the Early Virginia School

(Cambridge, 2020), 36-9.

¹¹ James M. Buchanan, *Why I, too, am not a Conservative: The Normative Vision of Classical Liberalism* (Cheltenham, 2005), 99-100. "Realistic utopia" is itself a term used by Rawls: John Rawls, *The Law of Peoples* (Cambridge MA, 1999), 6.

¹² Geoffrey Brennan, "James Buchanan: An Assessment," March 2013, online at <https://oll.libertyfund.org/pages/geoffrey-brennan-james-buchanan-an-assessment-march-2013> (accessed 27 June 2020). We are grateful to Alan Hamlin for providing us with his own recollection of this occasion.

¹³ Jules Coleman, "Constitutional Contractarianism," *Constitutional Political Economy*, 1/2 (1990), 135-48; David Reisman, *James Buchanan* (Basingstoke, 2015), 46-64; S. M. Amadae, *Rationalizing Capitalist Democracy* (Chicago, 2003), 149-52; S. M. Amadae,

article we first examine the shared intellectual context that framed the early work of both Buchanan and Rawls and brought them together as seeming philosophical allies during the 1960s. We then analyze a significant theoretical divergence between them in the 1970s – which we see as related to their contrasting responses to the politics of those years and which generated an early version of the debate about ideal theory and realism in political thought. Indeed, part of the interest of a comparative study of Buchanan and Rawls lies in observing how these two theorists developed contrasting positions out of a common stock of intellectual resources.

Political Economy, Games and the Ethics of Competition

The emergent historiography on Rawls makes the important point that Rawls’s theory of justice was a product of the 1940s and 1950s rather than the 1960s – the essentials of what subsequently became *A Theory of Justice* had been settled long before its publication in 1971. Rawls’s protean intellectual trajectory has been shown to have begun with liberal Protestant theology in the 1940s and then shifted in the 1950s towards a Wittgenstein-influenced ethical naturalism grounded on inter-personal recognition and community.¹⁴ A similar story can be *Prisoners of Reason: Game Theory and Neoliberal Political Economy* (Cambridge, 2016), 182-7; Fleury and Marciano, “The Sound of Silence,” 1506-7; Brian Kogelmann, “Rawls, Buchanan and the Search for a Better Social Contract,” in Paul Dragos Aligica, Christopher J. Coyne and Stephanie Haeffele, eds., *Exploring the Political Economy and Social Philosophy of James M. Buchanan* (London, 2018), 17-38; Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (Princeton, 2019), 108-10; Levy and Peart, *Towards an Economics of Natural Equals*, 30-5.

¹⁴ David Reidy, “Rawls’s Religion and Justice as Fairness,” *History of Political Thought*, 31/2 (2010), 309–44, and “Rawls on Philosophy and Democracy: Lessons from the Archived Papers,” *Journal of the History of Ideas*, 78/2 (2017), 265–74; Mark Bevir and Andrius

told with respect to Rawls's engagement with political economy. The economics that underpinned *A Theory of Justice* blended together the cutting-edge welfare economics, game theory and social choice theory of the mid-twentieth century.¹⁵ Like Rawls's, James Buchanan's writings were also initially a response to the debates among economists in the 1940s and 1950s about rational behavior, market failure and collective action.

In broad terms, Buchanan and Rawls demonstrate the way in which normative theorists of the mid-twentieth century sought to revive and legitimate their projects by drawing on economic theory. As has been discussed elsewhere, two vectors of economic argument were significant for post-war political theory and for Buchanan and Rawls in particular: welfare economics and game theory. First, in welfare economics during the 1930s and 1940s there had been a backlash against the traditional utilitarian analysis that identified how to maximize social welfare through cardinal utility measurements. This approach now appeared to rest on a mistake, since it assumed that it was possible to compare the utility levels of different individuals when this was not, or so it was argued, scientifically possible. Gališanka, "John Rawls in Historical Context," *History of Political Thought*, 33/4 (2012), 701–25; P. MacKenzie Bok, "To the Mountaintop Again: The Early Rawls and Post-Protestant Ethics in Post-War America," *Modern Intellectual History*, 14/1 (2017), 153–85, and "'The Latest Invasion from Britain': Young Rawls and His Community of American Ethical Theorists," *Journal of the History of Ideas*, 78/2 (2017), 275–85; Forrester, *In the Shadow of Justice*, 1–39; Andrius Gališanka, *John Rawls: The Path to a Theory of Justice* (Cambridge MA, 2019).

¹⁵ Kenneth Arrow, "Some Ordinalist Utilitarian Notes on Rawls's Theory of Justice," *Journal of Philosophy*, 70/9 (1973), 245–63; Daniel Little, "Rawls and Economics," in Mandle and Reidy, eds., *A Companion to Rawls*, 504–25 at 504–12; Forrester, *In the Shadow of Justice*, 12–24; Gališanka, *John Rawls*, 84, 89–95; Stefan Eich, "The Theodicy of Growth: John Rawls, Political Economy, and Reasonable Faith," *Modern Intellectual History* (this issue).

Instead, a new wave of welfare economists – led by Abram Bergson, John Hicks, Nicholas Kaldor and Paul Samuelson – argued that only so-called “Pareto-optimal” improvements could be justified by economists, since policies that met this criterion would improve the position of someone without making anyone else worse-off. Simultaneously, fearing that the Pareto criterion was ultimately a relatively weak and uninformative guide for public policy, some of these “new welfare economists” argued that it would also be scientifically legitimate to scrutinize the economic implications of different normative decisions about social welfare. It was this opening of economics to normative theory that Kenneth Arrow famously disrupted when he argued in his 1951 *Social Choice and Individual Values* that it was not in fact possible to reach a coherent collective choice about social welfare that reflected the individual preferences of the members of a given community.¹⁶ The early work of Buchanan and Rawls therefore emerged in the context of a debate about whether normative theory and economic analysis could adjudicate on distributional issues, which in turn raised the further question of whether public policy could ever be said to be grounded on the free consent of citizens.

Second, Buchanan and Rawls drew on game theory, which emerged in the 1940s as a flexible set of techniques for analyzing the interaction between rational agents that could be applied to a number of disciplines.¹⁷ As historians of game theory have noted, its rise to

¹⁶ Kenneth Arrow, *Social Choice and Individual Values* (London, 1951); William J. Baumol, *Welfare Economics and the Theory of the State* (London, 1952); Amadae, *Rationalizing Capitalist Democracy*, 117-22; Beatrice Cherrier and Jean-Baptiste Fleury, “Economists’ Interest in Collective Decision After World War II: A History,” *Public Choice*, 172/1-2 (2017), 24-33; Herrade Igersheim, “The Death of Welfare Economics: History of a Controversy,” *History of Political Economy*, 51/5 (2019), 827-65.

¹⁷ For Rawls, see Bevir and Gališanka, “John Rawls in Historical Context,” 701-25; Anne M. Kornhauser, *Debating the American State* (Philadelphia, 2015), 175-220; Andrius Gališanka, “Just Society as a Fair Game:

prominence reflected the particular technocratic preoccupations of Western democracies governed by militarized states making the transition to the new circumstances of the Cold War after 1945. This new age of technological governance raised acute questions about rationality and choice while new interdisciplinary forms of research in the social sciences – drawing on the mathematical techniques of the hard sciences – were advanced on a much larger scale through the patronage of states and think tanks.¹⁸ The publication of John von Neumann and Oscar Morgenstern’s *Theory of Games and Economic Behavior* in 1944 stimulated many social scientists and philosophers, among them Buchanan and Rawls, into deploying the techniques of rational choice in their own fields. For Buchanan and Rawls, there was a fascinating similarity between designing the rules of a game and the social contract tradition in political theory, which also sought to formulate general principles to structure individual decision-making.

However, this latter aspect of the thought of Buchanan and Rawls was also inspired by a third source of economic ideas which has attracted less attention than welfare economics and game theory: the economic theory and social philosophy of Frank Knight. Knight was a creative but also elusive thinker, who did not conform to any of the straightforward categories used to classify political thought.¹⁹ Along with Jacob Viner and Henry Simons, he

John Rawls and Game Theory in the 1950s,” *Journal of the History of Ideas*, 78/2 (2017), 299–308. For Buchanan, see Amadae, *Rationalizing Capitalist Democracy*, 133–55; Amadae, *Prisoners of Reason*, 175–92.

¹⁸ Robert Leonard, *Von Neumann, Morgenstern and the Creation of Game Theory: From Chess to Social Science, 1900–1960* (Cambridge, 2010); Paul Erickson, Judy L. Klein, Lorraine Daston, Rebecca Lemov, Thomas Sturm, and Michael D. Gordin, *How Reason Almost Lost its Mind: The Strange Career of Cold War Rationality* (Chicago, 2012); Paul Erickson, *The World the Game Theorists Made* (Chicago, 2015); Amadae, *Prisoners of Reason*.

¹⁹ Angus Burgin, “The Radical Conservatism of Frank Knight,” *Modern Intellectual History*, 6/3 (2009), 513–38; Ross Emmett, *Frank Knight and the Chicago School in American Economics* (London, 2009).

was a founder of the so-called “Chicago School” of economics, a critic of the New Deal, and the teacher of a generation of economists who would play important roles in the later rise of neo-liberalism such as Buchanan, Milton Friedman and George Stigler. Yet Knight was also a staunch critic of a merely economic analysis of human behavior and expressed grave doubts about the long-term viability of a social order grounded on a pure form of capitalism. Indeed, Knight felt an affinity with conservatism, believing that social science had fostered a hubristic belief that “it may be possible to change the character and constitution of society in a way comparable to the modern transformation of technology through science.”²⁰

Amid a complex, dizzying body of work Knight made several pioneering points that would be of great significance for subsequent debates in political theory and which help to explain what Buchanan and Rawls had in common intellectually. Both Buchanan and Rawls attested to the importance of Frank Knight in the development of their thinking.²¹ In Buchanan’s case, Knight had taught him at Chicago while he was a graduate student after the Second World War and Buchanan paid generous tribute to Knight as his intellectual role model.²² Rawls recollected reading Knight in the early 1950s along with other economists such as Samuelson, Hicks, and Morgenstern and Von Neumann as he germinated his ideas , a

²⁰ Frank Knight, “Economic Theory and Nationalism,” in his *The Ethics of Competition* (London, 1936), 277-360, at 348.

²¹ Levy and Peart, *Towards an Economics of Natural Equals*, 261.

²² James M. Buchanan, *Economics from the Outside in: “Better than Plowing” and Beyond* (College Station, 2007), 71-2, 75-7, 205-6; James M. Buchanan, “The Economizing Element in Knight’s Ethical Critique of the Capitalist Order,” *Ethics*, 98/1 (1987), 61-75, at 61; Ross Emmett, “Why James Buchanan Kept Frank Knight’s Picture on His Wall Despite Fundamental Disagreements on Economics, Ethics, and Politics,” in Richard E. Wagner, ed., *James M. Buchanan: A Theorist of Political Economy and Social Philosophy* (Basingstoke, 2018), 1155-70.

claim that is supported by the archival evidence of his unpublished lectures at Princeton of 1951-52.²³

Close readers of Rawls are familiar with the distinction between risk and uncertainty made by Knight, which played a significant role in decision theory more generally and Rawls's formulation of the original position in particular. As Knight put it, risk is when the outcome is unknown but the probabilities of different outcomes occurring are known, whereas uncertainty is a situation in which both the outcome *and* the probabilities of different outcomes are unknown.²⁴ It was this latter condition that Rawls thought applied to the choice of principles of justice in the original position – since it was not possible to quantify the chances of the parties in the original position ending up as the worst off in society they would (Rawls argued) maximize the position of the least advantaged subject to the equal liberty and fair equality of opportunity constraints.²⁵ But this was just one well-known example of a larger intellectual debt that Rawls owed to Knight – a debt also owed by Buchanan. First, Knight was a strong critic of the maximization of utility as an adequate characterization of the goals of liberalism. Rather than envisaging the classical liberal tradition as one that regarded “liberty for the individual and mutuality in the relations between individuals as instrumental, i.e., as conditions for maximizing individual want satisfaction,” Knight argued that “liberty and mutuality” were best regarded as “moral ideals” that were ends in

²³ “John Rawls: For the Record,” interview by Samuel R. Aybar, Joshua D. Harlan, and Won J. Lee, *Harvard Review of Philosophy* 1/1 (1991), 38-47, at 39; Thomas Pogge, *John Rawls: His Life and Theory of Justice* (Oxford, 2007), 16-17; Gališanka, “Just Society as a Fair Game,” 302.

²⁴ Frank Knight, *Risk, Uncertainty and Profit* (New York, 1921), 43-8. See also R. Duncan Luce and Howard Raiffa, *Games and Decisions* (New York, 1957), 13.

²⁵ John Rawls, *A Theory of Justice* (Cambridge MA, 1971), 152-6.

themselves which guaranteed freedom as an “inalienable right” and entrenched equality of status in modern commercial societies.²⁶

Second, Knight argued that both market economies and democratic polities were vulnerable to the accumulation of inequality over time. Knight made an observation about inequality that was to be very influential for a number of political theorists, notably Rawls and Hayek, but also Buchanan and numerous other subsequent writers on distributive justice.²⁷ Knight argued against desert as a justification for economic inequality on the grounds that the “capacity to labor productively” was ethically no different from inherited wealth since it too was a product of unchosen “inheritance, luck, and effort of acquisition.”²⁸ Indeed, Knight thought it was simply a matter of luck that some individuals found themselves in a position “to furnish services which are in demand” and it was therefore implausible that such lucky individuals should have “an ethical claim to a superior share of the social dividend (except to the extent that the capacity is itself the product of conscientious effort).”²⁹

²⁶ Knight, “Economic Theory and Nationalism,” 287-8. Knight’s argument about the inescapability of normative values in turn influenced Paul Samuelson (another of Knight’s students) in his formulation of the “new welfare economics”: see Roger Backhouse, *Founder of Modern Economics: Paul A. Samuelson*, vol. 1, *Becoming Samuelson, 1915-1948* (Oxford, 2017), 462-70.

²⁷ Ben Jackson and Zofia Stemplowska, “On Frank Knight’s ‘Freedom as Fact and Criterion,’” *Ethics*, 125/2 (2015), 552-4; Andrew Lister, “Markets, Desert and Reciprocity,” *Politics, Philosophy and Economics*, 16/1 (2017), 47-69; Forrester, *In the Shadow of Justice*, 24.

²⁸ Knight, “The Ethics of Competition” (1923), in his *Ethics of Competition*, 41-75, at 56.

²⁹ *Ibid.*, 57. Although Knight was temporally the most proximate source of this point for Rawls, as Eric Nelson and Albert Weale have observed, similar ideas can also be traced back to Rawls’s reading of Christian theology and Henry Sidgwick respectively: Eric Nelson, *The*

In both economics and politics, argued Knight, it was in fact “personality power, ability to persuade and to organize” that was simultaneously the most critical skill for commercial and electoral success and “one of the forms of power most unequally distributed by nature.”³⁰ As a result, in both markets and democracies Knight envisaged a cumulative growth of inequality and monopoly, with large corporations driving out competitors, a wealthy elite growing ever more affluent, and demagogues constructing political machines and manipulating public opinion.³¹ Both fields, said Knight, were arenas which were fundamentally about a competitive struggle for power, with participants driven by “the psychological sense of emulation or rivalry,” although he was inclined to see politics as plagued by a more dangerous form of this competition since in business the will to power was somewhat constrained by the concrete material realities of providing a service to customers.³²

Third, Knight developed a powerful analogy between economics (and later politics) and playing games. Knight alighted on this parallel in the early 1920s, before the later rise of game theory or Wittgensteinian philosophy, both of which are usually regarded as the key sources of interest in games among mid-twentieth century political philosophers.³³ As we have seen, Knight saw participation in business and politics as to a large extent motivated by *Theology of Liberalism* (Cambridge MA, 2019), 49-72; Albert Weale, “Meaning and Context in Political Theory,” *European Journal of Political Theory*, 13 May 2020, online at doi:10.1177/1474885120925375, 5-6. However, the fact that Rawls’s contemporaries, like Buchanan and Hayek (less assiduous readers of theology and Sidgwick), also adopted the same scepticism about desert suggests that Knight was pivotal in drawing this point to the attention of political theorists.

³⁰ Knight, “Economic Theory and Nationalism,” 292.

³¹ Ibid., 295-9, 304-5.

³² Ibid., 296-7.

³³ Knight, “Ethics of Competition,” 46, 60-6.

the desire to outdo rivals rather than to satisfy wants or render public service. It therefore occurred to him that these fields could be analyzed as competitive games and subjected to a normative rather than a purely social scientific assessment according to how “fair” the rules of the game were. Knight argued that games lose their interest and degenerate without a set of fair rules that are rigorously enforced.³⁴ The difficulty posed by Knight was how to determine these rules: “the problem of agreeing upon certain general principles to be followed and upon a process and a mechanism for securing agreement on particular issues, i.e. on a ‘constitution.’” This “problem of social self-constitution” required free agreement through open discussion. This ruled out, Knight insisted, both the use of coercive force and of “persuasion” in formulating political norms.³⁵

Knight had grave doubts that ordinary citizens were capable of this level of constitutional deliberation without turning to political leaders for guidance. Yet Knight was also pessimistic about the capacity of leaders to rise to the occasion, not least because they would be far from disinterested observers: “advocacy of extensive reform is practically the solicitation of the position of king on the part of the reformer.”³⁶ Knight did not offer a worked out alternative to this possibility, but he thought that the impartial authority of appropriately credentialed intellectual experts, alongside, and analogous with, religious

³⁴ Knight, “Economic Theory and Nationalism,” 301-3; Ross Emmett, “Maximisers Versus Good Sports: Frank Knight’s Curious Understanding of Exchange Behavior,” in his *Frank Knight and the Chicago School in American Economics*, 87-97.

³⁵ Knight, “Economic Theory and Nationalism,” 342-5, quotes at 342, 345; see Burgin, “Radical Conservatism,” 530-3 on this aspect of Knight’s thought. For the affinities between Knight and Habermasian discourse ethics (rather than Rawlsian contractarianism), see Dalibor Roháč, “Knight, Habermas and Rawls on Freedom, Personhood and Constitutional Choice,” *European Journal of the History of Economic Thought*, 19/1 (2012), 23-43.

³⁶ Knight, “Economic Theory and Nationalism,” 349-52, quote at 351.

leaders, could play a valuable role in designing fair social institutions. Such experts would work together disinterestedly, “absolutely renouncing interest in individual prominence or power,” since Knight distrusted above all else the public intellectuals of his own time who masqueraded as specialists but in fact were engaged “in a competitive solicitation of the ‘ignorant masses’ for support against each other.”³⁷ Although Knight never offered a systematic theory of constitutional choice, his interest in devising a mechanism to ensure the fairness of social rules was a resonant one, which both John Rawls and James Buchanan were to take very seriously.

The fourth idea explored by Knight that would play out in the later work of both Rawls and Buchanan was the role of “ideal theory” in the analysis of social institutions.³⁸ Knight defended the specification of highly abstract, purposefully unrealistic ideals in political and economic theory. He used Max Weber’s notion of “ideal-types” to defend economic theory from the criticism of institutionalist economists that economics wrongly disregarded the role of social context in shaping market behavior. Knight maintained that the value of economic theory was precisely that it abstracted away from the complexities and contingencies of social reality.³⁹ As Knight put it: “a ‘science’ of human behavior, to be relevant or practically significant, must describe *ideal* and not actual behavior, if it is

³⁷ Ibid., 357-9, quotes at 357, 358.

³⁸ Thus when Stemplowska and Swift name Rawls as the author of the term “ideal theory” they are mistaken (even if the rest of their analysis is accurate): Adam Swift and Zofia Stemplowska, “Ideal and Nonideal Theory,” in David Estlund, ed., *The Oxford Handbook of Political Philosophy* (Oxford, 2012), 373-89. See also their “Rawls on Ideal and Nonideal Theory,” in Mandle and Reidy, eds., *Companion to Rawls*, 112-27, and Zofia Stemplowska, “What’s Ideal About Ideal Theory?,” *Social Theory and Practice*, 34/3 (2008), 319-40.

³⁹ Ross Emmett, “Frank Knight, Max Weber, Chicago Economics, and Institutionalism,” in his *Frank Knight and the Chicago School*, 111-123, at 114-16, 119-20.

addressed to free human beings expected to change their own behavior voluntarily as a result of the knowledge imparted.”⁴⁰ Curiously, then, Knight presented economic theory as valuable because it embodied a regulative ideal that could be compared with historical reality and subsequently made the target of efforts at social reform, in effect shifting from a Weberian social scientific notion of idealization to a more explicitly normative one without acknowledging the change of register. Indeed, he favored elaborating a normative set of ethical ideals that were necessarily unrealistic but still offered a guide to action:

Does the judging faculty actually work by reasoning out alternatives and deciding which is preferable, or does it not rather formulate ideals and compare actuality and potentiality with these, and with each other indirectly, by so comparing them with an ideal? No doubt both methods are used, and are useful; but we contend that in regard to the larger and higher questions, the ultimate problems of moral and social life, the formulation of ideals is a necessary step. There is a place, and a vital place, for an “absolute” science of ethics. Its dicta will not be really absolute, for they never cut loose entirely from the real world and its possibilities of growth and transformation, and they will always grow and change. But at least they are not “merely” relative; they must be beyond the immediately attainable, and will often lie in the field of the actually impossible, patterns to be approached rather than objectives to be achieved.⁴¹

⁴⁰ Knight, “Economic Theory and Nationalism,” 278.

⁴¹ Knight, “The Ethics of Competition,” 44. Rawls underlined this passage in his copy of the book and wrote in the margin: “J as F holds this view”: image reproduced in David M. Levy and Sandra J. Peart, “Efficiency or a ‘Fair’ Game: John Rawls Contra Lionel Robbins,” working paper, 27 November 2007, online at https://www.researchgate.net/publication/237278013_Efficiency_or_a_Fair_Game_John_Rawls_Contra_Lionel_Robbins, accessed 27 June 2020, 14.

As we will show below, the subsequent work of Rawls and Buchanan can be read as making apparent a tension within Knight's work between his staunch advocacy of "ideal theory" on the one hand and his conservative skepticism about ambitious projects of social reform on the other.

Behind the Veil

As Buchanan suggested in his letter to Hayek, Buchanan and Rawls first got to know each other after the publication of Buchanan and Gordon Tullock's seminal work, *The Calculus of Consent*, in 1962. On Buchanan's account, *Calculus* was drafted between September 1959 and April 1960 with the final version sent to print in February 1961.⁴² In his memoirs, Buchanan recollected that although the book was "essentially worked out independently of the comparable construction of John Rawls," he and Tullock did read Rawls's 1958 paper "Justice as Fairness" during the book's composition.⁴³ After the publication of *Calculus*, Rawls wrote to Buchanan to praise the book and to note that his own nascent work had embarked on a similar approach in seeking to select "a system of basic institutions" rather than "specifying criteria for specific allocations" and in following "the main idea of the contractarian tradition, ie some sort of unanimity rule."⁴⁴ Shortly thereafter Buchanan and Tullock created the research network that would eventually become the Public Choice Society, which was initially called the Committee on Non-Market Decision-Making and held its inaugural conference in April 1963. Rawls attended the second meeting of the

⁴² James M. Buchanan, "Genesis," *Public Choice*, 152/3 (2012), 253-5, at 253.

⁴³ Buchanan, *Economics from the Outside*, 14.

⁴⁴ John Rawls to James Buchanan, n.d. (c. June/July 1962), Box 46, Series 1: Correspondence, James M. Buchanan papers (C0246), Special Collections Research Center, George Mason University Libraries (hereafter "Buchanan Papers").

Committee on Non-Market Decision-Making in 1964.⁴⁵ At this meeting, Rawls presented a paper that summarized his nascent theory of justice to an audience that included Buchanan, Tullock, Anthony Downs, Mancur Olson, William Riker, and John Harsanyi.⁴⁶ The first reference to Buchanan in Rawls's published work occurs around this time as well, in his 1963 paper "Constitutional Liberty and the Concept of Justice," which has a footnote on the similarities between *Calculus* and Rawls's approach, but also indicates that *Calculus* appeared only after the paper was written.⁴⁷

Why did Buchanan and Rawls see themselves as engaged in a similar project? One reason is that both had been quick to appreciate that the game theory debates about decision-making under conditions of risk and uncertainty initiated by von Neumann and Morgenstern were of great potential significance for political theory. The 1940s and early 1950s saw the development of a large economic literature – which ran far beyond the field of game theory – on how individuals should rank alternatives when it was unclear what the outcome of a specific choice would be. A key finding of this literature was that it was possible to use probability theory to translate ordinal utility rankings into a numerical scale that economists could use to calculate which decision between a set of alternatives would maximize an individual's expected utility.⁴⁸ The economist and philosopher John Harsanyi was the first to

⁴⁵ James M. Buchanan, "Obituary: Justice Among Natural Equals: Memorial Marker for John Rawls," *Public Choice*, 114/3-4 (2003), iii-v, at v.

⁴⁶ Amadae, *Rationalizing Capitalist Democracy*, 149.

⁴⁷ John Rawls, "Constitutional Liberty and the Concept of Justice" (1963), in John Rawls, *Collected Papers* (Cambridge MA, 1999), 73-95, at 74. This is confirmed in the letter from Rawls cited above at n. 44.

⁴⁸ Jacob Marschak, "Rational Behavior, Uncertain Prospects, and Measurable Utility," *Econometrica*, 18/2 (1950), 111-41; Kenneth Arrow, "Alternative Approaches to the Theory of Choice in Risk-Taking Situations," *Econometrica*, 19/4 (1951), 404-37; Arrow, "Ordinalist

notice that the technical apparatus of this discussion could be used to answer the dilemma posed by Kenneth Arrow to welfare economics, namely how was it possible to move in a liberal society from diverse individual preferences to an overall agreement on how to advance social welfare? Harsanyi showed that the puzzle could be solved by reinterpreting the ethical choice about the preferred distribution of income in society as a hypothetical decision by individuals about the distributive pattern they would prefer if they did not know what their own position within the social structure would be. From this impartial perspective – in which individuals are assumed to have an equal chance of ending up anywhere in the income distribution (and also of having different “subjective attitudes and tastes”) – Harsanyi argued that the rational choice of distributive principle would be to maximize expected average utility.⁴⁹

Both Buchanan and Rawls took up this intuitive idea of modelling political agreement between diverse individuals. However, as Andrius Gališanka and Katrina Forrester have pointed out with respect to Rawls, it was Frank Knight’s earlier preoccupation with games that offered Buchanan and Rawls a distinct path away from strategic interaction towards an attempt to design rules that the players would regard as fair while also granting them space for individual choice and the pursuit of legitimate self-interest.⁵⁰ Both Buchanan and Rawls drew on Knight’s analogy with games to work out how to draw up fundamental constitutional

Utilitarian Notes,” 250-1.

⁴⁹ John Harsanyi, “Cardinal Utility in Welfare Economics and in the Theory of Risk-Taking,” *Journal of Political Economy*, 61/5 (1953), 434-5, and “Cardinal Welfare, Individualistic Ethics, and Interpersonal Comparisons of Utility,” *Journal of Political Economy*, 63/4 (1955), 309-21. On Harsanyi, see Philippe Fontaine, “The Homeless Observer: John Harsanyi on Interpersonal Utility Comparisons and Bargaining, 1950-64,” *Journal of the History of Economic Thought*, 32/2 (2010), 145-73; for discussion of Harsanyi’s veil, see Brian Barry, *Theories of Justice* (Berkeley, 1989), esp. 76-9, 334-5.

principles – as with the formulation of the rules of a fair game, constitutional principles, they said, should be drawn up before particular players can anticipate how certain rules might advantage them.⁵¹ As we have seen, Knight's work had made some initial steps towards proposing disinterested deliberation over rules (albeit by experts) as a way of generating governing political principles.⁵² Both Buchanan and Rawls drew on contractarian ideas in the history of political thought to elaborate on this insight by introducing a pre-constitutional deliberation or decision to identify fair principles for political organization.

In strict chronological terms, Buchanan and Tullock were the first in print in 1962 with a worked-out version of their theory of constitutional choice. Fundamental to their theory was the stipulation that the rational individual faced with a choice about which constitutional principles to adopt should be “uncertain” about what their “precise role will be in any one of the whole chain of later collective choices that will actually have to be made.” Such an individual would therefore not “have a particular and distinguishable interest separate and apart from his fellows”; such an individual “will not find it advantageous to vote

⁵⁰ Gališanka, “Just Society as a Fair Game,” 302-4; Gališanka, *John Rawls*, 90-2; Forrester, *In the Shadow of Justice*, 12-14.

⁵¹ Pogge, *John Rawls*, 16-17; James M. Buchanan, “Rawls on Justice as Fairness,” *Public Choice*, 13/1 (1972), 123-8, at 123; James M. Buchanan and Gordon Tullock, *The Collected Works of James M. Buchanan*, vol. 3, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (1962) (Indianapolis, 1999), 80; James M. Buchanan, “Politics and Science: Reflections on Knight's Critique of Polanyi,” *Ethics*, 77/4 (1967), 303-10, at 307-9.

⁵² Buchanan also cited Rutledge Vining, another economist taught by Knight, as sparking Buchanan's interest in designing constitutional rules: see Malcolm Rutherford, “Chicago Economics and Institutionalism,” in Ross Emmett, ed., *The Elgar Companion to the Chicago School of Economics* (Cheltenham, 2010), 25-39, at 35; Buchanan, *Economics From the Outside*, 210.

for rules that may promote sectional, class, or group interests” because they cannot predict which side of such rules they would end up on. Individuals should approach constitution-making as equals and agree unanimously on the principles that will structure the constitution.⁵³ In his copy of *Calculus of Consent* Rawls wrote next to this passage: “This is equivalent to the Harsanyi-rule.”⁵⁴

Rawls’s original position, although it had been evolving across a number of papers during the 1950s, only reached its settled form in his 1967 paper “Distributive Justice.” His 1958 “Justice as Fairness,” which as we have seen Buchanan and Tullock were aware of while writing *Calculus*, contained the idea of parties reaching agreement on principles to govern society, but in this iteration of the original position the parties still retained knowledge of their current social position. Rawls pictured an already established society in which agreement was sought on the principles by which social complaints might be judged. Risk or even uncertainty entered Rawls’s theory at this stage insofar as he stipulated that once such principles had been agreed they would be binding on all future complaints, so he argued that individuals would be unlikely to propose a principle that would advantage themselves in the

⁵³ Buchanan and Tullock, *Calculus of Consent*, 78-80, quotes at 78.

⁵⁴ Copy of *Calculus of Consent*, Box 14, Personal Library of John Rawls (HUM 48.1), Harvard University Archives (hereafter “Rawls Library”), 78. Harsanyi is also cited in Rawls’s “Justice as Reciprocity,” 217, which was published in 1971, and contained references to a 1966 publication, but was drafted in 1959. See Samuel Freeman, “Editor’s Preface,” in Rawls, *Collected Papers*, ix-xii, at x.

present because they wouldn't know how it would affect them in the future.⁵⁵ But this was not the full-dress version of the veil of ignorance.

In the aforementioned 1963 paper "Constitutional Liberty and the Concept of Justice," Rawls considered the possibility of a situation in which existing people may find themselves in a situation in which they "share [the] risk" of a bad outcome – becoming a slave having been captured during a war between city-states no less – which is an improvement on being killed upon capture. He suggested that their acceptance of the "shared risk" under the right conditions would render the scheme "fair or at least not unfair."⁵⁶ In his second 1963 paper, "The Sense of Justice," Rawls set out the original position at the beginning of the paper in a way that mirrored the 1958 paper but then added that "it is assumed that there is an absence of information; in particular it is assumed that the parties do not know their social position, nor do they know their peculiar talents and abilities..."⁵⁷ The veil of ignorance finally received its name, shape and central position in the 1967 paper "Distributive Justice."⁵⁸

It will not come as a surprise to those familiar with these debates that choice under uncertainty seemed to these thinkers to point to specific recommendations, but these turned out to be different for each author. Strictly speaking, Buchanan and Tullock offered a procedural argument that did not seek to prescribe the constitutional principles that would be chosen through such a procedure – rather their concern was to stress the importance of unanimity rather than majority rule or another decision rule as the only unobjectionable

⁵⁵ John Rawls, "Justice as Fairness" (1958), in his *Collected Papers*, 52-4. Though the paper contained the idea that "The restrictions that would so arise might be thought of as those a person would keep in mind if he were designing a practice in which his enemy were to assign him a place" (54). This was echoed in "Justice as Reciprocity."

⁵⁶ Rawls, "Constitutional Liberty," 84.

⁵⁷ John Rawls, "The Sense of Justice" (1963), in his *Collected Papers*, 96-116, at 113.

⁵⁸ John Rawls, "Distributive Justice" (1967), in his *Collected Papers*, 130-54, at 132.

means of arriving at such principles. There was therefore a sense in which Buchanan and Tullock had developed a contract theory that was analogous to the Pareto principle: on their account, all citizens had to agree to the constitutional rules and “consensus” on those rules could be said to prevail when “there exist no particular changes on which all citizens can agree.”⁵⁹ This was ultimately, said Buchanan, a “marginalist” rather than a “total” “interpretation of the contract theory,” which sought to evaluate specific improvements to existing constitutional structures rather than to prescribe the construction of an entirely new polity.⁶⁰

The cost of this approach – as Rawls recognized – was that it privileged existing institutional structures and distributional arrangements rather than questioning their basis. Rawls’s notes in the margin of his copy of *Calculus of Consent* expressed his worries about the status quo bias inherent in this approach. Next to the passage from Buchanan quoted above about the social contract addressing only those changes on which all citizens can agree, Rawls wrote: “But not satisfactory if take existing distribution of knowledge.”⁶¹ In the *Calculus of Consent*, Buchanan and Tullock did give some hints about how they saw their approach to constitution-making playing out politically, perhaps revealing how narrowly they interpreted their references to “uncertainty” over one’s future position. Since “constitutional prohibitions against many forms of intervention in the market economy have been abolished

⁵⁹ James Buchanan, “Marginal Notes on Reading Political Philosophy,” in Buchanan and Tullock, *Calculus of Consent*, 320-1; James Buchanan, “The Relevance of Pareto Optimality,” *Journal of Conflict Resolution*, 6/4 (1962), 341-54.

⁶⁰ Buchanan, “Marginal Notes,” 321.

⁶¹ Copy of *Calculus of Consent*, Rawls Library, 319. S. M. Amadae has pointed out that Rawls’s 1964 paper to the Committee for Non-Market Decision-Making argued against economists’ focus on the Pareto principle to the exclusion of other criteria for this reason: *Rationalizing Capitalist Democracy*, 150.

within the last three decades,” the “rational individual” may in fact seek at the level of constitutional choice “the imposition of some additional and renewed restraints on the exercise of such legislative power.”⁶²

Tullock gave an early glimpse of their differences with Rawls over their favored distributive pattern in correspondence in 1964, noting that, based on the acceptance in *The Calculus of Consent* of some form of moderate income insurance, Tullock’s favored distribution was less egalitarian than the one Rawls had in mind. Tullock supported “a free market economy with mildly progressive taxes but a floor below which incomes cannot fall except for convicted criminals” rather than maximizing the position of the disadvantaged.⁶³

Nonetheless, the similarity of the methodology of the early work of Buchanan and Rawls is striking, especially in light of the differing political orientations they came to represent. Both sought to develop a contractualist method that could generate rules to guide institutional structures rather than individual behavior or policy decisions (though as we will highlight in the next section, Rawls saw his work as primarily offering a theory that investigated judgements about justice rather than offering recommendations for political action).⁶⁴ To accomplish this, the veil of ignorance had a dual role to play (which Harsanyi had already made explicit in the 1950s). The veil had a technical significance – it was seen as

⁶² Buchanan and Tullock, *Calculus of Consent*, 82.

⁶³ Gordon Tullock to John Rawls, 8 June 1964, Folder 2, Box 19, John Rawls Papers (HUM 48), Harvard University Archives (hereafter “Rawls Papers”).

⁶⁴ In Rawls’s case this commitment to institutional structures can be traced back to his early utilitarian article “Two Concepts of Rules” (1955), his *Collected Papers*, 20-46. Rawls made Buchanan aware of this article after the publication of *Calculus of Consent*, observing “Hayek mentions it in his notes”: Rawls to Buchanan, n.d. (c. June/July 1962); James Buchanan to John Rawls, 13 July 1962, both in Box 46, Series 1: Correspondence, Buchanan Papers. We are grateful to Alan Hamlin for emphasizing the significance of this article.

necessary to solve an otherwise intractable problem: what would people with diverse preferences (or the possibility of changing them) all find unobjectionable? And it also had an ethical significance in that it modelled the “impartial and impersonal attitude” necessary for non-self-interested decision-making.⁶⁵ Rawls and Buchanan, more or less explicitly or happily, followed Harsanyi there.

Even at this earliest stage of their work, normative values played a fundamental role in Rawls’s and Buchanan’s rational choice modelling of agreement. To be sure, the normative ideas played different roles. For Buchanan and Tullock, the contracting parties, while assumed capable of something akin to the Rawlsian sense of justice, were meant to consider only their self-interest behind the veil. In addition, Buchanan and Tullock emphasized the technical or “practical” nature of the uncertainty assumption. But in justifying the adoption of the veil, they made a reference to Hayek’s explicitly normative defense of the prohibition to model general rules on particular cases.⁶⁶ Moreover, not only did they admit in the *Calculus* that the device of choice allowed them to model the normative force of consent but also, as we will see in the next section, Buchanan accepted that the device modelled a certain view of the moral status of individuals. Meanwhile, Rawls explicitly wanted the veil to model “fairness” and “justice” and, in addition, the contracting parties were to be reasonable. But he was also aware of the veil’s technical significance in allowing parties to reach an agreement.⁶⁷

⁶⁵ Harsanyi, “Cardinal Welfare,” 316.

⁶⁶ Buchanan and Tullock, *Calculus of Consent*, introduction and 78. They were referring to F. A. Hayek, *The Constitution of Liberty* (Chicago, 1960), 210-12.; Brian Kogelmann, “Rawls, Buchanan and the Search,” gives further reasons for thinking of Buchanan’s method as irreducibly normative.

⁶⁷ Though he also made further moves, such as his focus on primary goods, which made a determinate solution more likely.

What is the Point of Contractarianism?

In spite of the similarity of the early work of Buchanan and Rawls, after the publication of *A Theory of Justice* it became clearer that there were important differences between them. This was in part a result of the impact of the politics of the 1960s on their respective political views. For Buchanan, the politics of the 1960s were traumatic – he was deeply disturbed by the radical currents of the decade, their impact on university campuses, and by the left-ward tilt in US social and fiscal policy and the assertive liberalism of the Supreme Court.⁶⁸ *The Calculus of Consent* was (as Buchanan himself put it) a defense of “a political structure not grossly divergent from that envisioned by the Founding Fathers and embodied in the United States constitution.”⁶⁹ Buchanan’s faith in these structures and in the contractarian apparatus of *Calculus* had been diminished in the decade since its publication and this cast a more negative hue on his reception of *A Theory of Justice*. In Rawls’s case, while his published political views were submerged in his larger theoretical edifice, it seems clear that his assessment of the contentious debates and social change of this period was far more sympathetic than Buchanan’s.⁷⁰

⁶⁸ James M. Buchanan and Nicos E. Devletoglou, *Academia in Anarchy* (New York, 1970); Jean-Baptiste Fleury and Alain Marciano, “The Making of a Constitutionalist: James Buchanan on Education,” *History of Political Economy*, 50/3 (2018), 511-48.

⁶⁹ Buchanan, “Rawls on Justice as Fairness,” 123.

⁷⁰ Katrina Forrester, “Citizenship, War, and the Origins of International Ethics in American Political Philosophy,” *Historical Journal*, 57/3 (2014), 773-801; Forrester, *In the Shadow of Justice*, 40-110. For example, Rawls later referenced Supreme Court cases that gave hints about his political views. He clearly approved of *Brown v. Board of Education* (1954), see John Rawls, *Political Liberalism* (New York, 1996), 250, fn. 39. He also offered relative praise to *Brandenburg v. Ohio* (1969) for recognizing “the legitimacy of subversive advocacy

These differences first became evident when Buchanan reviewed *Theory of Justice*. Buchanan observed that although, on the basis of Rawls's earlier papers, he had "looked forward to publication of Rawls's long-promised treatise" he in fact found himself "less sympathetic" to Rawls than he thought. He sent a draft of the review to Rawls, noting that "Gordon Tullock says that the review reads as more critical than I actually am, but there are, I think, significant differences between us."⁷¹ Buchanan identified two reasons for his disappointment, and each repays closer scrutiny.

First, Buchanan felt that Rawls's derivation of the difference principle from the original position exceeded the brief of contractarianism as Buchanan understood it. While Buchanan accepted that contractarianism might rule out certain institutions – a discriminatory franchise, "restrictions on entry into professions," indeed any departure from Rawls's first principle of justice – he doubted that it was possible via the contractarian approach to agree that one specific distributional rule was the ideal or just one. Rather, it seemed more plausible that several such rules might qualify as fair in contractarian terms.⁷² As Buchanan observed privately in a later letter to Rutledge Vining, he regarded Rawls's identification of a single

in a constitutional democracy" and approved of *Wessbery v. Sanders* (1964) and *Reynolds v. Sims* (1964) for recognizing the importance of "a full and equally effective voice in a fair scheme of representation" for all (*Political Liberalism*, 345, 361). He was critical of the "profoundly dismaying" decisions in *Buckley v. Valeo* (1976) and *First National Bank v. Bellotti* (1978) that went against election spending limits (*Political Liberalism*, 359).

⁷¹ Buchanan, "Rawls on Justice as Fairness," 123; James M. Buchanan to John Rawls, 11 May 1972, Folder 6, Box 19, Rawls Papers.

⁷² Buchanan, "Rawls on Justice as Fairness," 124. This is a point also made by later critics of Rawls: Barry, *Theories of Justice*; Jeremy Waldron, "John Rawls and the Social Minimum," *Journal of Applied Philosophy*, 3/1 (1986), 21-33.

just distributional principle in *Theory* as “a genuinely tragic error.”⁷³ More broadly, Buchanan felt that contractarianism was fundamentally about the “*non-specification* of outcomes by external observers,” by which he meant the crafting of fair procedural decision rules, rather than specifying the substantive policy decisions or distributional pattern that would emerge within the contract. This was in part because Buchanan understood drawing up a social contract as analogous to determining the rules for economic exchange. As with agreeing on the legal framework for market transactions, Buchanan thought that “the contractarian social philosopher” should seek a rule-governed social order within which diverse individuals could freely agree between themselves on a variety of possible, mutually agreeable outcomes. Interestingly, though, Buchanan also understood such a procedural approach as an implication of what he called “the individualistic or Kantian precept that human beings are to be treated as ends never as means” and thus as an attempt to treat people as equals.⁷⁴

Rawls offered a characteristically emollient reply to Buchanan. He stressed that he had learned a lot from Buchanan and Tullock (“I fear that the references to it were not ample enough [in *Theory of Justice*]”). On this first criticism, he accepted that Buchanan’s point about the (unlikely) derivation of the difference principle had “great force” and noted that the principle was itself intended to be open to “considerable latitude of interpretation” when it came into play at the legislative stage.⁷⁵ Rawls himself later explained in *Justice as Fairness* that a unique agreement on the difference principle cannot be guaranteed and, in light of the exchange, we can speculate that Buchanan’s criticism may have played a role in Rawls’s thinking here.⁷⁶ But in another letter to Buchanan, written in 1976 in relation to Buchanan’s

⁷³ James M. Buchanan to Rutledge Vining, 25 July 1974, reprinted in Levy and Peart, *Towards an Economics of Natural Equals*, 131-4, quote at 133.

⁷⁴ Buchanan, “Rawls on Justice as Fairness,” 124; emphasis in the original.

⁷⁵ John Rawls to James M. Buchanan, 28 June 1972, Folder 6, Box 19, Rawls Papers.

⁷⁶ John Rawls, *Justice as Fairness: A Restatement* (Cambridge MA, 2001), 132-4.

critique of Robert Nozick, Rawls also emphasized that his contractarianism was only ever to allow for determinate conclusions as a result of a specific move: the principles were always to be selected in explicit comparison with an alternative set of principles.⁷⁷ This did allow Rawls to reach beyond Buchanan's "non-specification of outcomes by external observers."

Nonetheless, Rawls recognized that differences remained with Buchanan. The most significant was that Rawls sought "to find a central place for the value of community" in Kantian idealism and hence "to soften the individualist tendency of contract theory." Rawls added understatedly: "you may not want to do this."⁷⁸ Rawls's emphasis on a communitarian aspect of his contractarianism may seem surprising, but as Mackenzie Bok has observed, the concept of community in fact played an important role in Rawls's thought (and represented an element of his moral philosophy that was quite different from Buchanan's). For Rawls, "true community" consisted in a mutual recognition of moral personhood through the acceptance of shared governing principles of justice. This, Rawls thought, was a surer basis for the foundation of justice than rational self-interest. As Bok has shown, this commitment can be traced back through Rawls's engagement with Wittgensteinian ethical naturalism to his early Protestant Christianity.⁷⁹

Buchanan – a strong secularist – was in fact keen to dissociate Rawls from any connection with religious discourse. Buchanan preferred to interpret Rawls's theory "as an extension of the ethics of classical liberalism, as opposed to a modern secularized version of the ethics of Christian charity. The imputation of elements from the second of these ethical

⁷⁷ John Rawls to James M. Buchanan, 16 July 1976, Folder 10, Box 19, Rawls Papers. For Buchanan's critique of Nozick, see James M. Buchanan, "Utopia, the Minimal State and Entitlement," *Public Choice*, 23/1 (1975), 121-6; we return to Buchanan's differences with Nozick below.

⁷⁸ John Rawls to James M. Buchanan, 28 June 1972.

⁷⁹ Bok, "To the Mountaintop Again," 178-82; Rawls, "Justice as Reciprocity," 209.

structures into the Rawlsian dialogues has been the source of much confusion.”⁸⁰ Buchanan described his own underlying philosophical position as a “normative individualism” which “locates the sources of value exclusively in the consciousness of the individual” and accordingly sought to debunk the notion that politics should concern itself with notions such as the common good or the public interest.⁸¹ This was a position that – in spite of Buchanan’s own creative reading of Rawls – was ultimately somewhat different from Rawls’s focus on a shared scheme of social co-operation.

The second reason Buchanan gave for his growing doubts about Rawls related to his sense of how his own political position had shifted since writing *The Calculus of Consent*. Buchanan now worried that idealized views of justice, when invoked in real world political controversy, could be socially disruptive. Given that it was inevitably interests that would determine even the construction of constitutional rules, Buchanan was concerned that rules that were perceived by some to be “unjust” on idealistic grounds would thereby be subject to destabilizing social conflict, with no clear means of determining precisely “when criteria of ‘justice’ override the stability of law.” Buchanan left no doubt about what he had in mind here when he added: “Would John Rawls allow Earl Warren or his successors to make judgments on their own versions of ‘justice as fairness’ and, in the process, to disregard the embodied predictability of existing constitutional order?” Earl Warren’s tenure as Chief Justice of the Supreme Court was, of course, notable for a number of landmark civil rights rulings. Buchanan glossed his question as indicating that he believed “misguided idealism, operating in disregard of constitutional precepts” was a major source of what he regarded as

⁸⁰ Buchanan, *Why I, too, am not a Conservative*, 43.

⁸¹ Buchanan, *Why I, too, am not a Conservative*, 7; James M. Buchanan, “The Foundations of Normative Individualism,” in James M. Buchanan, *The Economics and Ethics of Constitutional Order* (Ann Arbor, 1991), 221-30.

the social and legal “chaos” of the 1960s and 1970s.⁸² In the 1960s, Buchanan argued, “the judiciary began to assume the role as guarantors of ‘justice’ in some idealistic sense” and, as a result, bore significant responsibility for the decay that Buchanan detected in the constitutional order of the United States.⁸³ The Warren Court, he had earlier remarked, “simply declares to be ‘constitutional’ that which it conceives to be ‘good’ and ‘true,’” thus undermining any attempt to control the disrespect for the rule of law that Buchanan thought was spreading throughout American academia and society.⁸⁴ While clearly sparked by his own political preoccupations, Buchanan’s more general suspicion about “idealism” was nonetheless one that would be echoed by the later realist critics of Rawls.⁸⁵

Rawls responded that *A Theory of Justice* offered a *moral* theory in the sense that it sought to “account for moral judgements” rather than “explain actions or institutions.” Hence it aimed principally to “account for our judgements of which constitutions are just and why.” Rawls regretted that Part II of the book may be misleading insofar as it suggested that he aimed to offer a “theory of political action and institutions.”⁸⁶ Should the Supreme Court

⁸² Buchanan, “Rawls on Justice as Fairness,” 127. On the Warren Court, see Lucas A. Powe Jr., *The Warren Court and American Politics* (Cambridge MA, 2000). For Buchanan’s hostility to the Warren Court, see Fleury and Marciano, “Making of a Constitutionalist,” 511-48.

⁸³ Buchanan, “Rawls on Justice as Fairness,” 128.

⁸⁴ James M. Buchanan, “Student Revolts, Academic Liberalism and Constitutional Attitudes,” *Social Research*, 35/4 (1968), 673.

⁸⁵ Bernard Williams, “Realism and Moralism in Political Theory,” in Geoffrey Hawthorn, ed., *In the Beginning was the Deed: Realism and Moralism in Political Argument* (Princeton, 2005), 1-17; Amartya Sen, “What Do We Want From a Theory of Justice?,” *Journal of Philosophy*, 103/5 (2006), 215-238; Carole Pateman and Charles Mills, *Contract and Domination* (Cambridge, 2007).

⁸⁶ John Rawls to James M. Buchanan, 28 June 1972.

apply “idealistic” justice directly then? Politely setting aside the specific point about Earl Warren – “I assume here that Earl Warren is a stand in and one is considering the general question, leaving aside the merits for this purpose of particular decisions” – Rawls did not agree that justice as fairness would entail a Supreme Court that disregarded precedent and predictability in law. His answer to Buchanan’s specific question – about the judiciary being empowered to deploy justice as fairness come what may – was no: ideas of justice would come into play in judicial decision-making where the law was ill-defined or where standards of fairness had to be invoked, not as principles that could dislodge or override precedent.⁸⁷

But behind this specific question lay a difference of emphasis, which drew on divergent aspects of Frank Knight’s thought. Whereas Rawls was ultimately committed to the notion of “ideal theory” that Knight had set out – “the function of theory is to formulate and clarify some conceptual pattern of action to the end that men may better conform to it” – Buchanan stressed instead the insight also pressed by Knight that “there are very weighty presumptions in favor of a generally ‘conservative’ position” insofar as radical, idealistic changes to the status quo would be socially destabilizing.⁸⁸ This latter point was the position that Buchanan developed at greater length in his full-scale work of contractarian political theory, *The Limits of Liberty* (1975). *Limits of Liberty* reflected Buchanan’s growing social anxieties or, as Brian Barry remarked in a review, *Limits* was characterized by a “tone of rancorous detestation for most of what has happened in the USA since 1960.”⁸⁹ The book emerged from a series of workshops that Buchanan had participated in at his Public Choice Center at Virginia Tech in the early 1970s on the relationship between anarchy and social order, a research topic that reflected the worries that Buchanan and his colleagues felt about

⁸⁷ Ibid.

⁸⁸ Knight, “Economic Theory and Nationalism,” 285, 334, 347-8.

⁸⁹ Brian Barry, “Review of *The Limits of Liberty & Freedom in Constitutional Contract*,” *Theory and Decision*, 12/1 (1980), 95-106, at 101.

the apparent decay of social norms during the 1960s.⁹⁰ One of the most forceful features of *Limits* was Buchanan's cautionary words about idealized models of reform that did not recognize the fragility of the status quo. Invoking Frank Knight, Buchanan set out to diagnose the tensions that had rent the American constitutional contract but to avoid "description of the 'good society' independent of either that which exists or the means through which attainment might be secured."⁹¹

Buchanan therefore argued that his ideas were "simultaneously more and less ambitious than those of Rawls." They were more ambitious since he sought to renegotiate the social contract in an existing society in which the parties to the constitutional deliberation were "not equals at the stage of deliberation and who are not artificially made to behave as if they are." But they were also less ambitious in that Buchanan did not offer any clearly defined principles that he thought would emerge from these contractual deliberations and indeed he repeated that he thought that Rawls's principles would be socially disruptive if they became the basis for concrete institutional proposals "in the pragmatically-oriented arena of day to day politics."⁹² As we have seen, for Rawls such a stance was problematic since it did not address the biases and inequalities of the status quo – something he thought could only be done by a consideration of social ideals. Rawls later emphasized to Buchanan that those who,

⁹⁰ Reisman, *James Buchanan*, 77-81; John Meadowcroft, *James Buchanan* (London, 2013), 24-31; Gordon Tullock ed., *Explorations in the Theory of Anarchy* (Blacksburg VA, 1972), and *Further Explorations in the Theory of Anarchy* (Blacksburg VA, 1974).

⁹¹ James M. Buchanan, *The Collected Works of James M. Buchanan*, vol. 7, *The Limits of Liberty* (1975) (Indianapolis, 2000), 96-135, 209-14, quote at 210. For references to Knight, see ix, xvii, 118, 209.

⁹² Buchanan, *Limits*, 221-2. For a more detailed discussion and reconstruction of Buchanan's ideas of realism and feasibility, see Alan Hamlin, "Constitutional, Political and Behavioral Feasibility," in Richard E. Wagner, ed., *James M. Buchanan*, 337-58.

like Buchanan, started “from the status quo” also needed to work out “a conception of the kind of society we would want gradually to reach...moving from a non-ideal situation to an ideal situation.” He added: “The principles one follows in doing this are extremely rough and it is difficult to make any firm statements. I did not attempt to do so.” But he continued: “The only point I would make here is that a contractarian view should, to be complete, include both cases and say how they are connected.”⁹³

Treating People as Equals

Buchanan was closely engaged with the controversies about the fiscal consequences of the welfare state in the United States during the 1970s, notably the emergence of the so-called “tax-payers’ revolt” which most famously resulted in California passing Proposition 13 in June 1978. Proposition 13 amended the state constitution to place limits on the level of property taxes and to require legislative super-majorities for any future tax increases.⁹⁴ Buchanan was a firm supporter of such constitutional constraints as a mechanism to rein in levels of tax and public spending.⁹⁵ His writings on political theory also increasingly reflected

⁹³ John Rawls to James M. Buchanan, 5 July 1984, Folder 9, Box 39, Rawls Papers. Though Rawls did not show how to transition from non-ideal to ideal theory, part III of *Theory of Justice* is not a pure exercise in ideal theory either since Rawls considered there whether full compliance can be assured in a well-ordered society rather than assuming full compliance to begin with.

⁹⁴ Isaac William Martin, *The Permanent Tax Revolt: How the Property Tax Transformed American Politics* (Stanford, 2008).

⁹⁵ James M. Buchanan, “The Potential for Taxpayer Revolt in American Democracy,” *Social Science Quarterly*, 59/4 (1979), 691-6; James Buchanan and Geoffrey Brennan, *The Power to Tax* (Cambridge, 1980).

this preoccupation with the justification of fiscal redistribution, and this led Buchanan to grapple afresh with Rawls's egalitarianism.⁹⁶

In the most emblematic of these writings, Buchanan reinterpreted the difference principle not as "providing a philosophical-ideological basis for egalitarian income-wealth transfers superimposed on a market order" but as grounded on what Buchanan termed a "Hobbesian" defense, namely that, in the absence of a sufficiently generous social settlement, the society that emerged from the social contract would be vulnerable to disruption by the refusal of the least advantaged to co-operate in production or abide by the law. Buchanan made it clear which sorts of contemporary social disruptions he had in mind, citing the "increase in crime" and "industry-wide strikes, notably those in public utility and public service enterprises." Such "erosion in the structure of legal order" could on this account perhaps be staved off by the application of the difference principle (though Buchanan indicated that he was also tempted by a rival strategy, that of more stringent enforcement of rights to secure social order, since he thought it was possible that current levels of social disorder simply reflected "a loss of political will" on the part of the authorities as opposed to Rawls's diagnosis that "the precepts of a just society are not present").⁹⁷

Rawls wrote an appreciative letter to Buchanan about the draft of this article that Buchanan had sent him, suggesting that, while it was not precisely what Rawls had in mind, Buchanan's argument came close to the considerations of stability that Rawls saw as entering

⁹⁶ James M. Buchanan and Winston C. Bush, "Political Constraints on Contractual Redistribution," *American Economic Review*, 64/2 (1974), 153-7; James M. Buchanan, "The Justice of Natural Liberty," *Journal of Legal Studies*, 5/1 (1976), 1-16; James M. Buchanan and Roger L. Faith, "Subjective Elements in Rawlsian Contractual Agreement on Distributional Rules," *Economic Inquiry*, 18/1 (1980), 23-38.

⁹⁷ James M. Buchanan, "A Hobbesian Interpretation of the Rawlsian Difference Principle," *Kyklos*, 29/1 (1976), 5-25, quotes at 21, 23.

his theory at the second stage of the justification of his two principles. Rawls offered his own version of Buchanan's point (and here we get a rare insight into Rawls's own political views):

I guess I do think that the social product is very much a joint product; and that while the poorer individuals & groups don't threaten to withdraw co-operation as a tactic, as a rational strategy so to speak, they do in fact withdraw their co-operation in other ways: by crime, by self-destructive & compulsive behavior and ways of life (eg by drug addiction); by acquiring far less constructive capacities for working successfully & co-operatively; by just not developing themselves from loss of self-respect (I am convinced that much low IQ scores is the result of large and disorganized families, etc). So while all this is not done as a threat, it perhaps has much the same destructive effect. The upper classes greatly miscalculate its consequences; though I believe they should take it into account for other reasons as well.⁹⁸

Rawls's analysis of this social injustice was therefore some distance from Buchanan's ultimate diagnosis of decaying state authority and he was careful to reserve his position with respect to the ultimately normative justification for a more egalitarian society. Indeed, in light of the critiques of Rawls that followed, it is notable that he was clear (in 1975) that he did not see the United States as a fair system of cooperation.⁹⁹

Nonetheless, it was also evident that the differences between Rawls and Buchanan on redistribution were more complicated than a standard conceptual contrast between egalitarian liberalism and neo-liberalism might suggest. Although reluctant to endorse extensive

⁹⁸ John Rawls to James Buchanan, 25 February 1975, Folder 10, Box 19, Rawls Papers

⁹⁹ For a similar example of Rawls making this point in 1973, see Forrester, *In the Shadow of Justice*, 126.

redistribution as a necessary outcome of contractual deliberations, Buchanan accepted that it could certainly be one of a range of legitimate agreements made at the contractual stage.

More fundamentally, in the late 1970s and early 1980s Buchanan drew on Knight's point that political and economic games must seem fair to their participants to be sustainable to argue that there should be a substantial attempt to equalize the endowments of market participants before competition begins. High inheritance taxes and government investment in education were necessary, Buchanan maintained, in order to give the market system a basic structural fairness. Libertarians such as Robert Nozick or Murray Rothbard who did not accept the need for "some rough equality in premarket positions" and later attempts to "knock off the edges of post-market extremes," said Buchanan, were in fact weakening their case for the market.¹⁰⁰ "A libertarian position," Buchanan argued, "is not inconsistent with an egalitarian one."¹⁰¹

Buchanan interpreted Rawls precisely as offering an argument for equalizing pre-market endowments along these lines, in a way that Buchanan thought was reminiscent of another early Chicago economist, Henry Simons.¹⁰²

¹⁰⁰ James M. Buchanan, "Fairness, Hope and Justice," in Roger Skurski, ed., *New Directions in Economic Justice* (Notre Dame, 1983), 53-69, quote at 69; Buchanan, "Justice of Natural Liberty," 11-15; James M. Buchanan, "Political Equality and Private Property: The Distributional Paradox," in Gerald Dworkin, Gordon Bermant and Peter G. Brown, eds., *Markets and Morals* (London, 1977), 70-2. Knight is discussed at 58-9, 66-7 of the first article.

¹⁰¹ Buchanan, "Justice of Natural Liberty," 16.

¹⁰² Ibid. For Simons, see his *Economic Policy for a Free Society* (Chicago, 1948); Ben Jackson, "At the Origins of Neo-Liberalism: The Free Economy and the Strong State, c. 1930-47," *Historical Journal*, 53/1 (2010), 135-6, 142-5; Burgin, *Great Persuasion*, 39-43, 51-3.

But there was – as Rawls was aware – a significant problem with how Buchanan conceptualized pre-market endowments. Like Rawls, Buchanan accepted Knight’s intuition that inequality in productive ability was a form of unchosen advantage analogous to inherited wealth. But unlike Rawls, Buchanan did not think that inequalities that arose from differences in productive ability should be the subject of inequality-reducing policies. This was a curious and under-argued distinction for Buchanan to make. As Andrew Lister has observed, the reason Knight’s equation of social and natural inequality was adopted by figures on the neo-liberal right such as Hayek was precisely to deploy it as a *reductio ad absurdum*. Since it was manifestly ridiculous to equalize natural endowments, argued Hayek, it was hard to justify equalizing social class differences without also being logically committed to this unappealing option.¹⁰³ Rawls saw the force of this point – he was willing to bite the bullet and accept that social justice should address both sources of inequality.¹⁰⁴ Buchanan’s position, in contrast to both Hayek and Rawls, was that it was justifiable to treat differently the disequalizing forces of initial class position and natural talent.

In his notes on Buchanan’s writing on this topic, Rawls found it hard to discern why Buchanan thought this. Buchanan had stated that it would be impossible in the social “game” for every player to have equal capacities and instead recommended that social arrangements should be structured so as to advance what was in effect Rawls’s notion of “fair equality of opportunity.” Buchanan regarded it as unfair “perverse handicapping” that equals in productive capacity might start in different social positions and so some would first have to catch up with the others to obtain the equal treatment they were due. Rawls noted: “could it be crucial here, though unstated, that the perverse handicapping of the market can be

¹⁰³ Lister, “Markets, Desert and Reciprocity,” 53-4; Hayek, *Constitution of Liberty*, 88-90.

¹⁰⁴ Rawls, “Distributive Justice,” 142 (Rawls cited Hayek’s *Constitution of Liberty* in making this point – see n. 5 on this page).

corrected; genetic draw cannot? But that would be a bad arg.”¹⁰⁵ But this was indeed what Buchanan thought. As he baldly stated elsewhere, differences in productive capacities “cannot be equalized by a reassignment of nonhuman assets or claims.”¹⁰⁶

Conclusion

The value of this comparison of Rawls and Buchanan is in part that it gives us a different perspective on Rawls’s relationship with the emergent neo-liberal challenge. As Barbara Fried observed, and we reported above, the polarity between neo-liberalism and egalitarian liberalism had in effect not yet been historically constructed when Rawls wrote *A Theory of Justice*. As Fried also argued, the tendency to retrospectively present that polarity as a contest between Rawls and Nozick is misleading, since Nozick’s hardline on the state’s distributive role is not in fact the position taken by most economic libertarians, who on the contrary accommodated some social welfare provision into their theories.¹⁰⁷ We can see this quite clearly in the case of Buchanan, who wrote a review of *Anarchy, State and Utopia* in which he ruled out Nozick’s rights-based approach as a blind alley for liberals and defended instead a contractarianism in which rights are derived from contractual agreement, a move that permitted space for agreement on redistribution. “Could we have reached agreement?”, Buchanan argued, was a more productive and soluble question to pose than “did this violate

¹⁰⁵ John Rawls notes on James M. Buchanan, “Rules for a Fair Game,” 19 November, no year [c. 1985], Folder 5, Box 45, Rawls Papers, 5-6, quote at 6 (second side).

¹⁰⁶ Buchanan, “Political Equality,” 81. This was a key difference between Buchanan and later “left-libertarianism”: Michael Otsuka, *Libertarianism Without Inequality* (Oxford, 2003); Barbara Fried, “Left-Libertarianism: A Review Essay,” *Philosophy and Public Affairs*, 32/1 (2004), 66-92.

¹⁰⁷ Fried, “Unwritten Theory of Justice,” 444; Robert Nozick, *Anarchy, State and Utopia* (New York, 1974).

someone's natural rights?"¹⁰⁸ To that extent, Rawls and Buchanan were on the same side *against* Nozick. The theoretical debate therefore becomes a more subtle one about precisely which forms of redistribution are justifiable rather than whether it is in principle permissible (and also becomes a debate about how one might use a contractarian methodology to resolve that question).

But it is also of historical interest to observe that Rawlsian liberalism and neo-liberalism initially emerged as entwined critiques of mid-twentieth century political economy. Although both intellectual currents have been criticized as unwelcome attempts to extend economic reasoning into the domain of the political, the point of the early writings of figures such as Buchanan and Rawls (and for that matter Hayek) was to register dissatisfaction with the aggregating, utilitarian logic of the field of economics and to press for an alternative approach that focused on assessing the broad social structures and rules that governed human conduct rather than individual policy decisions.¹⁰⁹

This shared appetite for rules over governmental discretion initially brought Rawls to the margins of a neo-liberal movement slowly growing in intellectual coherence and confidence. However, as the politics of the 1960s and 1970s unfolded, clear differences began to emerge. In comparison with Buchanan, the political change of that period – the civil rights movement, the Vietnam War, welfare state expansion – evoked little public comment from Rawls. But his political theory proved to be fertile ground for a new moral idealism that sought to advance civil and social rights.

Buchanan spoke for many on the neo-liberal right when he bemoaned the apparent decay of state authority and moral discipline revealed by this more assertive politics of individual rights and liberties. His commitment to a realist analysis of politics led him to a rather conservative response to the novel political alignments of the late twentieth century,

¹⁰⁸ Buchanan, "Utopia, the Minimal State and Entitlement," 125.

¹⁰⁹ We are grateful to Alan Hamlin for emphasizing this point with respect to Buchanan.

many of which precisely revolved around emancipating individuals from unjust constraints on their liberty. Paradoxically, it was Rawls's ideal theory that proved to be a more robust vessel for the transmission of a new social emphasis on personal autonomy into political philosophy.