

DEMOCRACY, NEOLIBERALISM AND JAMES BUCHANAN

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Long before the world found itself in the grips of a global pandemic – the economic consequences of which are already grave and may well foreshadow an equally troubling political fallout – there was a widespread sense of crisis regarding liberal democracy being articulated from various corners of the political spectrum. At the heart of these concerns are diagnoses of an erosion of democratic culture, a turn towards an often ill-defined populism and the crowding out of democratic practices through the dissemination of neoliberal techniques, rationalities and subjectivities.

In this article, I want to contribute to an understanding of these developments by scrutinising the link between democracy and neoliberalism at the current political conjuncture. More specifically, I am interested in the way that neoliberal theory and practice have come to (re-)shape and – possibly – disfigure contemporary democracy and, thus, may have contributed to its alleged multi-faceted crisis.

The following analysis of these issues proceeds in three argumentative steps. First, I will attempt to substantiate the diagnostic thesis sketched here and begin to explore how current transformations of democracy can be linked to the influence of neoliberalism. It should be stressed that this diagnostic takes the contemporary European context as its main frame of reference, but it is not necessarily confined to this. In a second step I will argue that these transformations are, in fact, best related to the thought of James Buchanan. The latter combines in a unique way the two tendencies that I take to be of major significance for our democratic times – with the caveats just mentioned – namely: the push towards a constitutionalisation of democracy in conjunction with an attack on political establishments,

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elites and their alleged sense of entitlement, which mixes neo-conservative elements with what is nowadays typically, if unfortunately, referred to as ‘populist’ animus. In this sense, James Buchanan is the quintessential neoliberal theorist of our time. I will conclude with a brief look at some of the paradoxes and strategic dilemmas arising from this contemporary constellation – in neoliberal theory and political practice.

Finally, let me spell out very briefly what I mean when I refer to contemporary ‘liberal democracy’ and ‘neoliberalism’ respectively. The former refers to a *real type* of contemporary democracy which, empirically (*ie.* not ideally) tends to be characterised by a combination of popular sovereignty and the rule of law; majority rule that finds its limits in individual (human) rights and public/administrative law binding state action. Beyond these institutional features, contemporary liberal democracy also features political cultures that combine relatively low levels of input-orientation with output-orientations that appreciate welfare-enhancing output/outcomes and, in the past, used to exhibit a sufficient will to be governed. The latter is a requisite of democracy possibly overstated in its importance by the classical theorists of political culture due to their Cold War fixation on ‘stability’, albeit remaining one that still ought not to be discounted entirely (Almond and Verba 1963: 1980).

‘Neoliberalism’ is notoriously difficult to define. In my view, however, the best available strategy to do so is a reconstruction of the historical context of its emergence and what its self-professed proponents associated with it. But even this reconstruction does not yield an entirely unequivocal notion of neoliberalism and a respective intellectual-political agenda that would be fully consistent and coherent. But despite the complaints over the alleged unusual fuzziness of the concept, neoliberalism is no exception in this regard, as anyone who has ever tried to distill an unequivocal notion of ‘conservatism’ can attest to.

Thus, the most promising way to conceptualise neoliberalism – striking a balance between the misleading attempt to identify some immutable core of it, on the one hand, and dissolving it into loosely connected neoliberalisms in the plural, on the other – is to pursue an alternative conceptual strategy. Specifically, it is prudent to consider that what neoliberals share is not a set of positive doctrines, nor even a more abstract but uniform world view. Instead, the thin common denominator between thinkers such as Friedrich August Hayek, Milton Friedman, the German

ordoliberals and many others, including James Buchanan, is a shared *problem*, that also distinguishes them from ‘classical’ or *laissez-faire* liberals (Burgin 2012; Slobodian 2018a). Neoliberals are, trivially, proponents of markets as the superior coordination device and the – far from trivial – problem they all face is how to set up and maintain markets. Accordingly, the neoliberal problematic concerns the preconditions of functioning markets and, as one might already suspect, democracy is a considerable issue within that problematic, as it is mostly viewed as a potential spanner in the works of smoothly functioning markets (Biebricher 2019).

Constitutionalising democracy

Neoliberalism’s overall fraught relationship with democracy has been well established in the research of the past two decades. However, the question still remains as to how exactly the effect of neoliberal theory and practice on actually-existing democracy in the recent past leading up to the present can be properly described. As already suggested above, I contend that there are two broad developments that can be observed. While they do not hold across each and every empirical case of liberal democracy, they are certainly pertinent and highly significant with regard to the contemporary European, if not the North Atlantic, context more generally.

The first is a strategy that is applied at the *institutional level* of democracy, which I will refer to as the *constitutionalisation of democracy*. This is an umbrella term subsuming a number of developments that are not confined to efforts at constitutionalisation in the strict sense of the term, but comprising various endeavors to reduce the space for discretionary decision-making by democratically elected governments, especially with regard to matters of economic and financial policy. The rationale behind the constitutionalising strategy is not too difficult to comprehend. While some varieties of neoliberal thought occasionally flirt with authoritarianism (see Biebricher 2020), it would be an exaggeration to allege that neoliberal thought was trying to abolish democracy and disenfranchise the people in order to install some kind of oligarchical rule. Rather, neoliberal thought is replete with ideas about how to make markets safe from democracy, and one cluster of ideas seeks to minimise the influence of the (democratic) sovereign by reducing the leeway of its representatives. To the extent that these endeavors are successful, it does

not matter all that much whether a wayward electorate comes to elect a semi-socialist government, because the latter is significantly constrained in its actions.

Two strategies to immunise economic policy and, consequently, markets that are constituted and sustained by it, stand out. First, there is the attempt to restrict the potential range of state policy-output by subjecting it to rules and regulations. Now, it must at once be noted that the sheer fact that state action is subject to juridical limitations is not scandalous in itself. One of liberal democracy's crucial characteristics is the articulation of popular sovereignty with the rule of law, which both enables the democratic expression of the former but simultaneously acts as a constraint (Habermas 2001). But the strategy of genuine constitutionalisation goes beyond this by calling for rules that entail substantive – and deeply consequential – economic policy positions or, rather, take some of the respective options. Pertinently, passing such rules and enshrining them literally in the constitution is only one of the strategies of relevance here.

The other strategy aims at blunting the powerful sword of national sovereignty and state action by subjecting it to international constraints that range from bilateral trade treaties to regimes such the WTO and supranational federations such as, prominently, the European Union. One way of explicating the strategic appeal of such efforts at constraining the radius of state action is to place it in the context of one of the major conceptual weaknesses of the constitutionalisation option, which resides in the nature of 'self-binding rules' discussed above. After all, it is not only conceptually difficult to effectively bind sovereigns – even if we seek to cleanse sovereignty of its ineradicably metaphysical connotations – but also practically, as anyone who has ever tried to kick an (allegedly) bad habit by sticking to a set of self-imposed rules comes to realise. Some neoliberals, as well as others (see Elster 1979; 2008) concluded that, all Kantian convictions to the contrary notwithstanding, committing oneself is much more obligating and hence efficacious *when these commitments are made to others*. This is the case whether be it through the reciprocities codified in bilateral treaties, the multilateral obligations of regimes or the curious nature of the commitments in a federation such as the European Union, which are mutual but also to a third entity, namely the quasi-state structures on the supranational level.

In my view, the most significant impact of neoliberalism on democracy at the level of institutions over the last two decades can be attributed to the

effects of these two variants of the constitutionalisation strategy. Critical research began to take note of these developments in the late 1990s when Stephen Gill introduced the terminology of the ‘new constitutionalism’ to capture the multiple binding effects of trade agreements, GATT and the WTO that he described as a newly emerging regime of disciplinary capitalism (see Gill 1998; Cutler and Gill 2014). Around the same time, Fritz Scharpf pointed to the ‘Four Freedoms’, which constitute the Common Market of the European Union, depriving nation states on the basis of mutual commitments of their erstwhile prerogative of boundary control. This, in turn, set in-motion a dynamic of negative integration that left nation-states with only rudimentary options to uphold their specific historical settlements of democratic (welfare-)capitalism (Scharpf 1999, 2010). Much more recently, Quinn Slobodian has chronicled the continuing attempts to constrain national sovereignty through various forms of international integration, showing that what he refers to as a ‘globalist’ orientation was, from its beginnings, part and parcel of neoliberal thought (Slobodian 2018a).

However, exhibit A for this neoliberal thrust of the recent past is obviously the European Union after the double hit of Financial and Eurozone Crisis that triggered a massive effort at (re-)constitutionalisation. This aimed overall, at more ‘sustainable public finances’ as proponents referred to it, or plain and simple ‘austerity’ as described by critics (Blyth 2013). In the European context, the two constitutionalisation strategies are intertwined: the large majority of European countries, including many that are not part of the European Union and/or the Economic and Monetary Union – such as Switzerland, Sweden and Denmark – have introduced ‘debt brakes’, which require certain caps on deficits and debts. The beginning of this trend dates back to the early 2000s, but the pace of it has picked up significantly since then. While in some European cases, such as Switzerland, the introduction of a constitutional device to limit deficits and debts was a strictly unilateral decision, the majority of European countries are members of the European Union or even the Economic and Monetary Union (EMU). It was through the latter that the logic of the second version of the constitutionalisation strategy also came to the fore.

The starting point of the efforts to commit members of the EMU to each other, as well as the European Commission as a (semi-)external enforcing agent, dates back to the introduction of the Euro (Savage 2007). Yet, efforts at more effectively binding budgetary policy and public finances through multilateral commitments and third-party enforcement were again taken-

up vehemently in response to the Eurozone Area Crisis. Based on the narrative that had come to prevail in public discourse – according to which it was individual states and their profligacy, or at least fiscal leniency, that were to blame – EU/EMU leaders passed a wave of reforms, which invariably were aimed at tightening and expanding the existing rules on public finances (see Dyson 2017). These ranged from the Two-Pack and Six-Pack to the *Treaty on Stability, Coordination and Governance*, often dubbed the ‘Fiscal Compact’. In the latter, the signees committed themselves to more rigid rules on fiscal austerity and also vowed to introduce debt brakes into national legislation. Thus, we have the whole panorama of constitutionalisation efforts in full view, where measures at the national level – that is, enshrining debt brakes in the constitution – are intertwined with rules codified in Secondary European Law, genuinely multilateral treaties that are based on the principle of mutual commitment (the Fiscal Compact), and a third-party enforcing agency in the form of the European Commission.

I have no intention of overstating the overall effect of these measures with regard to the way they effectively circumscribe national sovereignty in matters of fiscal reform and more general socio-economic policy. After all, the full force of these instruments, including financial sanctions, has never been resorted to so far. Still, they form an impressive backdrop of intimidation, especially for the less-powerful members of EU/EMU. Moreover, while the Commission has shown leniency in applying the rules in the past, this should not be interpreted as a general unwillingness of European Institutions to play hardball with member states, as the record of the infamous ‘Troika’ attests (Woodruff 2016).¹

In sum, at the institutional level, one of the most significant developments regarding democracy is the curtailment of discretion in matters of trade and more general economic policy. This is very much in accordance with many demands articulated in the tradition of neoliberal thought (Biebricher 2015) and exemplified, not the least, in the designs of James Buchanan, as we will come to see below.

¹ Consequently, Scharpf (2017) and many others have called for a ‘de-constitutionalisation’ of European economic and, especially, financial policy. A similar case is made by Grimm (2015) with his concerns about a potential ‘over-constitutionalisation’ of economic policy at the European level.

Populism/authoritarianism and democracy

The other major tendency we can observe unfolding in the early-Twenty First Century, and escalating over the last half-decade, is the rise of populism which, in many cases, would be more appropriately termed ‘authoritarianism’ (Brown *et al.* 2018). The (predominant) answer to the question of how to think about the link between neoliberalism and populism has been shifting in various directions ever since Chantal Mouffe’s pioneering studies in the early 2000s (Mouffe 2000). While some commentators have seen the most recent wave of populism/authoritarianism as essentially directed against neoliberalism (West 2016), the more plausible position exemplified in the works of Quinn Slobodian (2018b), Wendy Brown (2019), Melinda Cooper (2017) and others stresses the continuities and correspondences between neoliberalism and authoritarianism/populism.

So how can we describe and problematise democratic political culture in our present and what role does neoliberalism play in this regard?

Returning to the introductory section and the very brief sketch of liberal democracy in-practice, we can begin to capture the respective transformations focussing on input and output orientations prevailing in electorates. As mentioned there, the classic literature put a questionable premium on stability and the importance of moderate levels of input orientation – that is, demands for participation and integration into the will formation process on behalf of citizens, as well as output orientation exhibiting a certain degree of willingness to be governed while demanding a satisfactory output from the political system. To some extent, both conditions – for better or for worse – could be seen to be given throughout many periods since the beginning of the new century. In contrast to this, the overall tendency of change in the most recent past has been an increased intensity in input and output orientation. With regard to the former, while populists propagate a model of politics that is problematic in many ways, one effect of the rise of populism is an increased politicisation of the electorate (not least amongst those who seek to arrest any populist momentum), which has manifested itself in increased election turnout. Additionally, it has come in the form of increased scrutiny with regard to the characteristics of the input channels in liberal, representative democracies. Specifically, increased concerns have been raised about the ability of institutionalised procedures to transmit the preferences of the electorate in an appropriate manner, hampered by any

number of factors – from corporate power trumping popular sovereignty, to a ‘cartel’ of parties acting as selectively restrictive gatekeepers to the political system or, simply, an elite political class that is no longer intent on representing citizens, but rather remains almost exclusively preoccupied with consolidating or augmenting its own power.

This concern over the ability of the broader social system to effectively set the agenda for, and also hold accountable, the political system and its constitutive actors – which, from a systems-theoretical point of view, was hardly ever more than democratic lyricism – also spills over into output orientation. In my view, this is where the most pronounced changes have taken place. Here, the tolerance level regarding political decisions overall has decreased considerably – fuelled by a distrust in political elites and actually-existing democracy, or even democracy in general. Anti-establishment politics is a staple mark of populism, as long as it is not in power. One of its gravest effects is a growing reticence within populations wary of submitting to governmental decisions, and that sense of oppression, tyranny or oligarchy when forced to comply with laws and measures they disapprove of more or less passionately – the recent politics of the Coronavirus Crisis in the US serves as a textbook example.

In the remainder of this article, I will focus on the spectrum of political mentalities represented not by populism in general, but its right-wing version – not least because the relation between the left-wing variant and neoliberalism does not pose too many puzzles. What I will contend is that neoliberal theory and practice represent one factor contributing to the phenomenon of right-wing populism. Specifically, neoliberalism has sought to enthrone the individual and its preferences, and while it is correct to note that neoliberal theory is amenable to the family values of social conservatism (Cooper 2017), Brown is right to argue in her most recent contributions that neoliberalism’s attack on the social is the flipside of this absolutisation of the individual (Brown 2019). As she emphasises, this trend is not entirely captured in the diagnosis that *homo oeconomicus* is about to colonise each and every corner of society. Rather, it is the crowding-out of non-individualist imaginaries in the name of a methodological and normative individualist view: the former insisting that everything social is a derivative of the individual and, hence, must be explainable with reference to the latter; the latter holding that individuals are the sole source of legitimate valuation, with their preferences considered to be exogenous factors beyond critical scrutiny. Consequently, and tellingly, neoliberal thought in most of its variants erases all

considerations of structural or epistemic power. Instead, it focuses almost exclusively on a rather narrow concept of coercion as the opposite of freedom, driving home its normative-methodological individualist contentions (Biebricher 2014).

In light of his individualist framing, democracy turns into a context in which the main questions are: to what extent does the individual get to realise her preferences and, at least equally important, what potential democracy holds with regard to coercing the individual into compliance with law and, thus, infringes upon some kind of basal freedom? To put it differently, neoliberalised democratic political culture has increasingly focused on the notion of negative freedom (from) at the expense of positive freedom (to). It has radicalised the old liberal template of ‘politics as zoo-keeping’ (Barber 1984) into an almost neurotic fear of the intrusiveness of democracy – disparaging its potential as a space for productive conviviality, let alone the idea that citizens would not just be consumers choosing between various political packages, but could aspire to consider themselves as co-authors of such packages (see Biebricher 2015).

At its worst, which has unfortunately come to the fore in many contexts amid the Coronavirus Crisis, this vulgarisation of freedom as the uninhibited ability to act-out on whatever underlying desire comes close to John Locke’s ‘licence’ in contrast to true freedom. Individual freedom is charged with cynical and social darwinist ingredients in what is, in essence, a desublimated will-to-power that has left behind its embeddedness in the norms of the social. For instance, at a demonstration against anti-Corona measures in the United States, a protester held up a sign that simply and devastatingly demanded: ‘Let the weak die!’ The subject of this freedom run amok is not the soberly calculating *homo oeconomicus* that populates so many variants of neoliberal reasoning; rather, it is the Frankenstein’s monster that neoliberalism inadvertently co-created (Brown 2019: 10).

Before we take a look at how these two trends relate to one another, as well as the ensuing tensions and dilemmas, in the concluding section of the article, we now turn to the work of James Buchanan to show how his work epitomises both in many aspects.

James Buchanan: Rules and individual freedom

James Buchanan represents a variant of neoliberal thought that blends some generic ingredients derived from Chicago economics and Hayekian social philosophy, in conjunction with significant original additions drawn from public choice theory. Together, these comprise what he himself would have termed an approach in constitutional economics and what others have identified as the ‘Virginia School’ in political economy. While it is impossible to provide an exhaustive positioning of Buchanan’s thought vis-a-vis other currents in neoliberal thought here, let me still highlight some of the crucial fault-lines that distinguish his work from other influential neoliberals.² While the later Buchanan, in particular, came to increasingly appreciate Hayek’s work, there is a stark dividing line between them. This stems from Hayek’s turn to evolutionary theory, which stands in marked contrast to Buchanan’s emphasis on deliberate reforms and the concomitant objections to what he called Hayek’s mistaken evolutionary optimism. But while he shares this emphasis on the deliberate setting of ‘rules of the game’ – that is, constitutional orders – with the German ordoliberal tradition, both differ strongly on how to conceptualise the state and its personnel, as well as the role of (economic) science vis-a-vis politics. Ordoliberals, such as Walter Eucken, still held-out hope that the state could become the guardian of the common good, and posited that governing officials should be supplied with scientific expertise from economics and law to implement the required policies. Conversely, Buchanan’s public choice commitments regarding the pertinence of *homo oeconomicus* to the realm of politics suggests that such hopes are, at best, naive, given that politicians are opportunistically inclined to do whatever increases their chances of re-election. Further, while he shares with Gary Becker the foundational significance of *homo oeconomicus* for his entire approach, Buchanan still challenged Becker’s arguments. For example, Buchanan was critical of Becker’s work on investments in human capital,

2 Scholarship on the history of neoliberal thought has not been able to develop a comprehensive mapping of the field of neoliberal currents that would command widespread, or even close to unanimous, support. Indeed, it is unlikely that such a taxonomy might ever emerge, given the constestedness of these issues. Yet, there are still plenty of highly useful attempts to provide such maps with regard to particular issues (such as democracy) or, at least, certain sectors of the field. See, for example, Biebricher (2015, 2019); Caldwell (2011); Emmett (2020); Mirowski (forthcoming); Stahl (2020); and Vanberg (1988).

arguing that the expected utility of such investments was indeterminable given the dynamic nature of the individual utility function.

Let me now focus on why I believe Buchanan to be the neoliberal thinker who best represents the tendencies sketched out in the preceding section. Let us begin with the trend towards constitutionalisation, which is a straightforward case to make.

One of the most crucial foundational analytical distinctions that underlie Buchanan's overall thought is that between choices within a given set of rules to pursue one's interest and choices among various sets of rules. The latter takes place on what Buchanan calls the constitutional level, which is clearly the focus of his work (Brennan and Buchanan 1985: xi). But Buchanan is not only interested in the descriptive-analytical dimension of this exercise. Relying on a contractualist framework, he also wonders what set of rules could all (potentially in the future) affected consent to, arguing that the normative quality of a polity increases to the extent that it approximates such a set of rules (Buchanan 1975: 178).

While there are shifts and tensions in Buchanan's decade-spanning oeuvre (Boettke and Stein 2018), the core of his diagnosis of the main problems of contemporary democracy has remained largely consistent: it is the realm of public finance. Here, two mechanisms reinforce each other to an ever-worsening effect. First, Buchanan's commitment to the figure of *homo oeconomicus* prompts him to cast settings of generic representative democracy as 'rent-seeking' sites. Here, rational, utility maximising actors demand special treatment from political actors and the latter tend to grant these (costly) rents, assuming that it will help them secure their re-election. Importantly, these costs tend to be hidden in deficits that lead to an accumulation of public debt, thus effectively externalising the cost of rent-seeking onto the entire tax-paying political community – including its future members (Buchanan 1967). This mechanism is reinforced, secondly, through what Buchanan describes in almost (neo-)conservative terms as an 'erosion of public morals', namely a fiscal morality that refrained from running deficits and abhorred debt. But this ethical approach to public finance all-but-evaporated at the hands of the influence of John Maynard Keynes, ushering in an age of budgetary libertinage (Buchanan and Wagner 1977).

Buchanan's conclusion is not too surprising. If the unwritten rules and tacit consensus on appropriate in fiscal policy have effectively broken down at the hands of Keynes, rent-seeking special interest groups, profligate

politicians and – not least – the architects of the ‘Great Society’, with its attempt to modernise, democratise and extend the (American) welfare state, then the (provisional) solution lies in the positivisation of these rules to rein-in runaway spending.³ Concretely, Buchanan proposes certain rules on the separation/decentralisation of the power to tax and the distribution of revenue in federal settings. He also makes the case for the introduction of a constitutional balanced-budget amendment (Brennan and Buchanan 1980: 183, 202). The latter is clearly a case-in-point to illustrate the constitutionalisation strategy discussed above. Buchanan’s version of the rule is a strictly procedural one that would require all current outlays by the state to be financed through current revenue – that is, taxes (Buchanan 1997). As already suggested, this particular rule is one element in a broader agenda of constraining fiscal policy; reverse revenue-sharing in federalist settings being another, pointing towards a more encompassing strategy of developing ‘a tax constitution for Leviathan’ (Brennan/Buchanan 1977). The hands of the Odysseus that is the democratic sovereign may not be bindable in each and every aspect, and certain areas of discretion will remain. But Buchanan believes that as long as the ability of the state to generate revenue is effectively curtailed through largely depoliticised constitutional rules, at least the worst effects of rent-seeking democracy may be curbed (Brennan and Buchanan 1980: 8). In fact, with the introduction of such rules, political communities might even move closer towards the ideal of unanimous approval of the rules of the game.

Yet, Buchanan’s constitutionalisation agenda is embedded in a broader framework of conceptualising the democratic state, which corresponds in many, albeit not all, respects to the populist unrest we have identified as an important trend in contemporary (European) political culture. As Buchanan himself noted, his outlook on democracy grew considerably more skeptical following the publication of the seminal *Calculus of Consent*, co-authored with Gordon Tullock in 1962. Throughout the 1970s, his outlook grew darker and is succinctly summed up in this statement

³ It is worth noting, though, that Buchanan was generally adamant that solely relying on the power of law to compensate for a process of cultural-ethical erosion would not be sufficient. For instance he contends: ‘I can scarcely imagine an interaction setting in which persons refrain from cheating, stealing and keeping promises only because of some fear of punishment. There is surely a minimal level of voluntary adherence to the whole set of norms by the Kantian precept – a level that must be reached by a substantial number of persons in the relevant social nexus’ (Buchanan 2005: 16).

from the mid-1980s: 'We must come to agree that democratic societies, as they now operate, will self-destruct, perhaps slowly but nonetheless surely, unless the rules of the political game are changed' (Brennan and Buchanan 1985: 150). How did Buchanan arrive at this gloomy conclusion? To be sure, from a public choice perspective, majoritarian representative democracy had never been considered a procedural panacea, as the rich literature on voting paradoxes and so forth attests. Now, however, these dysfunctions are increasingly considered to be part of a more general distortion on the input side of the political process (Brennan and Buchanan 1980: 24) that is also described in increasingly harsh terms. Specifically, the US, in Buchanan's view, is characterised by "constitutional anarchy" rather than any institutional translation of individual values into collective outcomes' (Buchanan 1975: 7) – a concern that is consistent with the description of the enthronement of the individual, whose preferences fail to be transmitted into politics in actually-existing democracy.

Critically, this is only the beginning of a process of radicalisation in Buchanan's thought, which comes to the fore in his embrace of the *Leviathan* model of the state. The basic assumption of this model is that state government is government by monopoly (Brennan and Buchanan 1980: 16). This uniquely powerful position leads towards an overall tendency pertaining to all state action: the maximisation of revenue to increase 'the income that accrues to government for discretionary use' (Brennan and Buchanan 1980: 27). Among other things, this can be used to finance rents granted.

The diagnostic radicalisation involved in this move is reflected in a number of aspects. First, against the received wisdom of public choice theory, the state is analysed 'as if' it was a quasi-monolith, including something approaching its own interest – that is, revenue maximisation. The despotic potential of such a monolith – not accidentally referred to as 'Leviathan' – is obviously much more disconcerting than the dysfunctional fragmented state emerging from classic public choice analyses. Indeed, while Buchanan shies away from equivocating the levying of taxes with outright theft, he is still deeply concerned that the monopolistic Leviathan state leaves no recourse against 'absolute exploitation of the individual by the state' in the latter's attempt to increase revenue (Brennan and Buchanan 1980: 195). The complement to this increasingly aggressive expropriation of citizens is their decreasing ability to rein-in Leviathan through electoral constraints: 'On balance, the appeal to the experience of history, and not least to recent events in the United States, does suggest

that government, in its current institutional setting, is close to being out of the control of the electorate' (Brennan and Buchanan 1980: 25). That is, there is 'no effective constraint on the exercise of government powers at all' (Brennan and Buchanan 1980: 7).

Fuelled by the detrimental democratic mechanisms described above, the Leviathan state has effectively severed the cords of electoral accountability. In turn, the collateral damage of its agenda of exploitation through taxation to maximise revenue is a 'constitutional structure [...] in disarray' (Buchanan 1991: 41). Both executive and judiciary have ceased to respect the limits of their respective branch of government – that is, enforcing and interpreting law. Instead, both have now colonised the genuine task of the legislature in making laws. The result is an almost despotic self-empowerment of these governmental branches:

Ideally, these institutions may be umpires in the social game; actually, these institutions modify and change the basic structure of rights without consent of citizens. They assume the authority to rewrite the basic constitutional contract, to change 'the law' at their own will (Buchanan 1975: 163).

The overall result is a democratic state that is characterised by an intrusive and arbitrary overbearing that prompts a growing and understandable disconnect between the state and the citizenry:

Increasingly, men feel themselves at the mercy of a faceless irresponsible bureaucracy, subject to unpredictable twists and turns that destroy and distort personal expectations with little opportunity for redress or retribution (Buchanan 1975: 14).

The individuals that make up the citizenry, thus, find themselves encroached upon in their personal (economic) liberties by an entity they have created, but which has now taken on a life of its own, turning against its creators, to use a famous analogy from Marx's analysis of the commodity. To be sure, some segments of the citizenry have already abdicated their claim to individual liberty, succumbing to the lure of 'parental socialism', willingly handing over control and responsibility over their life to the authorities, as the later Buchanan would frequently lament (Buchanan 2005). But there are those who have no such desire for dependency and, instead, fiercely defend their individual freedom and these defiants are Buchanan's real audience and the (potential) subject of the insurrectionary politics he envisions. These can take on different forms. Thus, seemingly empathising with an individualised resistance

emerging from a growing sense of anomy, Buchanan (1975: 164) asks rhetorically:

If leaders have no sense of limits, what must be expected of those who are limited by their ukases? If judges lose respect for law, why must citizens respect judges? If personal rights are subjected to arbitrary confiscation at the hands of the state, why must individuals refrain from questioning the legitimacy of government?

Another context of unrest at the meso-level are the ‘tax-revolts’ of the 1970s, culminating in the already-mentioned Proposition 13 passed in California (Buchanan 1979). But the political project Buchanan is ultimately envisaging is not confined to isolated acts of resistance and mid-level tax insurrections, but a ‘genuine revolution in constitutional structure’ (Buchanan 1975: x). As we already know, the pathologies of rent-seeking democracy are so deeply entrenched that the time for incremental reform is over. Instead, it will take a ‘constitutional revolution’, ‘which, it is hoped, may take place nonviolently, but which will, regardless, represent genuine revolution’ (Buchanan 1977: 286).

This ruptural politics is often framed in populist terms by Buchanan, expressing deep doubts regarding the established model of democratic politics. This is exemplified, for example, when he highlights that the

[California] taxpayers’ revolt [...] emerged *not* from within normal parliamentary process and interparty competition but from *outside* this system. The enormous success of Proposition 13 in California in the face of indifference and even opposition from most of the political establishment must surely raise some doubts about the extent to which normal political processes reflect the popular will (Brennan and Buchanan 1980: 25).

The revolt ‘has been populist and constitutional rather than elitist and legislative in its origins’ (Brennan and Buchanan 1980: 189). Referendums are to be welcomed because ‘legislators, executives, bureaucrats, and judges will keep arbitrary actions within tighter boundaries when they are subjected to potential reversals through popular referenda’. Moreover, they would quell the

fear of a quasi-permanent legislative or political class, composed of incumbents skilled in manipulating the interests of those groups seeking special favors from government, who provide the source of massive rents to members of the class (Buchanan 2001: 240, 238).

In Buchanan’s (2001) view of politics, ‘establishment elites’ are invariably identified as the ones who stand in the way of true constitutional

democracy and, thus, the immediate obstacle that needs to be overcome. However, Buchanan struggles to present any viable strategy as to how ‘the system’ could reform itself given his own analytical assumptions and, thereby, more-or-less inadvertently drifts towards the implicit espousal of a politics that mirrors the self-description of populist figures with their (hollow) promises to ‘drain the Washington swamp’, cut the Gordian knots of a locked-in rent-seeking democracy and smash the iron triangles that uphold a status quo skewed towards elite interests.⁴

In a certain sense, the marked populist tendency in Buchanan’s thought is not surprising. After all, close collaborators retrospectively highlighted his ‘populist instincts’ and he self-consciously steered clear of Ivy League institutions throughout his career – not least due to a ‘distaste for the ‘eastern establishment’ (Brennan and Munger 2014: 334, 335) in academia. Further, in the context of his recollections of the encounters with Hayek, Buchanan counted himself among ‘those [...] who had libertarian-populist blood in our veins’ (Buchanan 1992: 130) – in contrast to Hayek.

What emerges from the above is a view of politics in which an exploitative and arbitrarily intrusive government has wreaked havoc upon the constitutional order. Concomitantly, establishment elites further their interests in money and power at the expense of ordinary people. Against the backdrop of this self-destructing democracy that threatens to ruin its citizenry, individual resistance, revolts and even revolutions are not acts of reprehensible transgression. Instead, they are to be considered a rational, or at least legitimate, form of self-defense in aspiring to restore the conditions laid out in the American Constitution, animated by the wisdom of the Eighteenth Century. In other words, it is a view of politics that is profoundly amenable to the perspective of the average Tea Party sympathiser (Skocpol and Williamson 2012), who came to mould authoritarian populism in the US context over the last decade in such profound ways.

4 For a more elaborate treatment of the various links between neoliberal thought and contemporary authoritarian/populist projects in the United States, Italy, Germany and Austria, see Biebricher (2020). For a trenchant critique of Buchanan as a populist (and racist) anti-democrat, which, however, is mired in controversy, see MacLean (2017).

Conclusion

In this article – written from a perspective that is mostly informed by the experience of the North-Atlantic and, particularly, Europe – I have tried to identify what I take to be two of the most significant trends on the institutional constellation and political culture detectable in contemporary democracy, as well as how they are linked to the impact of neoliberalism. On the institutional level, there is as a tendency towards the constitutionalisation of certain policy areas, especially with regard to economic issues broadly understood. Be it through commitments to others in the form of bilateral trade treaties and/or multilateral regimes such as the WTO, unilateral codification in a country's constitution, or a combination of both as we have seen it in the response to the Eurozone Crisis – the uniform thrust of these measures is to effectively remove certain issues from the direct control of democratically legitimated governments.

On the level of political culture, the dominant trend I detect is the reassertion of the individual and its narrowly understood freedom from any kind of outside intrusion, including impediments that come with the coercive nature of laws passed by a majority of democratic representatives. The reaffirmation of the (white) individual has taken on the form of a populist unrest in many contemporary contexts, prompting the diagnosis of a crisis of liberal democracy. With respect to both tendencies, I have highlighted what I consider to be the contribution of neoliberalism.

Finally, and arguably most importantly, I have specified and illustrated these claims with reference to James Buchanan, whose work, in my view, exemplifies both trends more than any other leading neoliberal thinker. Here we find elaborate discussions on how a tax constitution – or, at least, specific instruments like the constitutional balanced-budget amendment – can help alleviate the pathologies of contemporary democracy. Furthermore, these demands are embedded in a more encompassing, if slightly more amorphous, critique of representative democracy on behalf of the individual that breathes the anti-establishment animus of populism. This is fused with a politics that, in an almost eschatological manner, yearns to overthrow the entrenched status quo – be it through individual anomic defiance, dispersed revolts or, ultimately, a constitutional revolution. In capturing and expressing both of these major trends pertaining to contemporary democracy, Buchanan can be aptly referred to as the quintessential neoliberal thinker of our time, albeit with the same

caveats that have been voiced above. That is, despite the many correspondences, my claim is not that Buchanan would have agreed with all of the positions held by the Tea Party or American (right-wing) populism more generally, and neither would he have endorsed Donald Trump as US President. Both are rather the Frankenstein's monsters that Buchanan's thought, in some of its major contentions, inadvertently helped to create.

I will conclude this article with a brief exploration of the paradoxes and strategic dilemmas looming in this constellation of trends that make it so difficult to navigate. Let me begin by pointing to two obviously anecdotal phenomena that are still instructive in this regard. First, there is the Anglo-American context where, among those concerned about the fate of liberal democracy at the hands of Trump or Johnson, demands have been voiced to limit the damage that they can do through increased constitutionalisation.⁵ Britain, with its unwritten constitution and the US with its Eighteenth Century one, are deemed to be in dire need for more robust constitutional boundaries – in order to do exactly what others see as one of the major dangers for liberal democracy: removing certain issues and the respective powers from the disposal of elected governments or, more specifically, the executive branch. Could it be that constitutionalisation is, simultaneously, a grave threat to liberal democracy as well as a way to save it from the powers of populism? Moreover, does it all simply come down to the specifics of the context?

Take another example that drives home the strategic conundrum even better. Champions of (liberal) democracy, particularly on the political Left, have long-criticised the austerity regime that has been imposed upon Southern European countries, including Portugal, Italy and Greece – some even likening the events unfolding in the latter in 2015 to a veritable *coup d'état*. Simultaneously, they have denounced the rise of right-wing populist movements from France to Austria and from Greece to Italy. But given these commitments, how is such a defender of (liberal) democracy to deal with a situation where it is precisely a right-wing movement/party that calls into question the legitimacy of constitutionalised rules regarding fiscal discipline? Indeed, this has happened, prominently, in the case of La Lega and its vocal leader Matteo Salvini in Italy. Before his ousting as

⁵ See, for example, contributions to the symposium on 'Reclaiming – and Restoring – Constitutional Norms', published in *Texas Law Review* 97 (2019), where this and other strategies are weighed and compared.

Interior Minister in 2019, Salvini had consistently highlighted the detrimental economic effects of austerity on Italy, while also scandalising the violation of Italian democratic sovereignty with regard to fiscal decisions. And to make matters even more complicated, this right-wing populist who attacked European austerity was also planning to introduce a flat-rate tax regime – one of the signature fiscal demands among contemporary neoliberals that can be traced back to Milton Friedman.

Finally, let us return to the level of neoliberal theory one last time and see how the paradoxes of the constellation play out in Buchanan's thought, which captures it in so many respects. At first sight, the matter may seem straightforward: the people realise that their government is effectively out of control and, in an expression of their democratic sovereignty, constrain Leviathan through constitutional rules. Upon closer scrutiny, though, things turn out to be more complicated. To begin with, while Leviathan increasingly appears as a separate entity turning against its citizens, this is merely an appearance because, mirroring the commodity in Marx's thought, it remains tied to its creator. Accordingly, 'when we speak of Leviathan we should be referring to controlling self-government, not some instrument manipulated by the decisions of others than ourselves' (Buchanan 1975: 149).

Thus, we are thrown back upon the thorny question as to how a democratic sovereign is to bind itself? This question comes with a number of problems. Those who are supposed to pass the laws effectively curbing the rent-seeking potential of democracy – that is, elected politicians – have no interest in doing so. At best, they enact mostly symbolic measures with multiple loopholes. To be sure, this plays into Buchanan's populist hands in that argument is, precisely, that political elites prosper at the expense of the people. But what is the solution?

At first sight, this may seem obvious: grant decision-making power to the citizenry through referenda and let them choose the rules, bypassing the cartel of party politics. Still, is there any reason to believe that the electorate will not only vote for lower taxes as in the case of Proposition 13, but also something like a balanced-budget amendment? There is considerable room for skepticism in this regard based on Buchanan's own assumptions. If fiscal discipline was held in such high regard among a majority of citizens, there would be no need for referenda or rules because parties could simply run on such a platform and hope to succeed – an option that Buchanan, therefore, must deny exists. This is only

consequential because the rent-seeking game is a two-way exchange, in which the blame can hardly be put exclusively at the feet of politicians or bureaucrats. After all, it is organisations rooted in economy and society that approach the political system with these demands and so, in different respects, it is the democratic sovereign itself – that is, the citizens constituting it – that is an integral part of the rent-seeking connection.

Consequently, when Buchanan describes the logic of self-binding rules – with reference to Robinson Crusoe building a primitive alarm clock to make sure he does not sleep-in as someone who ‘recognises his own imperfection in the face of possible temptation’ (Buchanan 1975: 93) – these are the characteristics of a wayward democratic sovereign that does not trust itself to abstain from the rent-seeking game. Still, can this sovereign then be trusted to give itself binding rules? There little reason to have confidence in its steadfastness in following through, even if the individuals constituting it were modelled as soberly calculating actors. But chances are even slimmer if we take into account the picture of the individual emerging from many of Buchanan’s analyses, which is one that enviously guards her freedom from any outside intrusion and is hypersensitive with regard to any impediment to her uninhibited will, likely including self-binding rules.

There are only two options left. One is to hope that during a small window of opportunity brought about by a major crisis, or other events that disrupt politics as usual, the people and/or its representatives take a heroic leap to enshrine a regime of rules and then, effectively, throw away the key needed to undo them. In other words, the sovereign would have to pass certain rules and, *ipso facto*, abdicate as sovereign so as to preclude a potential reversal. It goes almost without saying that this is not a realistic scenario, although the disappearance of sovereignty, or at least its diffusion, is a figure explicitly entertained by Hayek at some point.

The second option is at least as intriguing. This amounts to an explicit agenda of reforming the people (at least a sufficient number of them) and turning them into subjects willing and able to give themselves explicit rules and laws, and also make them subsequently superfluous as coercive laws backed by punishments because people would be willing to voluntarily adhere. Buchanan’s agenda, thus, comes to adopt a pedagogical dimension as well (Buchanan 2000), which is no small surprise given the typical claims to a staunch anthropological realism regularly put forward by liberals and conservatives alike, combined with

the admonition that political pedagogy is halfway to the totalitarian aspirations of creating a ‘new man’. Still,

to argue that the classical liberal does postulate the perfectibility of man is only to argue that we cannot, willy-nilly, take “man as he is” and expect idealised institutional structures alone to create the social order that we imagine to be possible. To me, it is naive to think that somehow man, as a product of combined biological and cultural evolution is necessarily qualified for membership in the liberal society. Man must be educated, both in ethics and in political economy, if he is to meet the standards (Buchanan 2005: 19).

Consider also this positioning: ‘in more general terms, this book is an expression of the hope that a new ‘civic religion‘ is on the way to being born [...] Our normative role, as social philosophers, is to shape this civic religion’ (Brennan and Buchanan 1985: 150). Thus, the dynamics of his theory lead Buchanan back to the thought of the Eighteenth Century, but not those quarters one would assume. Instead, they lead quite unexpectedly, to the familiar paradoxes and questionable resolutions of democratic theory and political pedagogy that have haunted thinkers dating back at least to Jean-Jacques Rousseau – a most surprising tradition to find oneself in as a neoliberal.

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