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James Buchanan on the nature of choice: ontology, artifactual man and the constitutional moment in political economy

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Historians of economic thought are paying greater attention to issues of social ontology (i.e. to the assumptions that economists make about the nature of social reality). We contribute to this burgeoning literature by exploring the hitherto neglected way in which James Buchanan invoked ontological considerations, concerning in particular the nature of human choice, both in criticising neoclassical economics and also in setting out his own contributions to constitutional political economy. We focus on Buchanan's account of man as an artifactual being who has the capacity to choose the kind of person he wishes to become, in particular by selecting the kind of preferences he wishes to have and the kinds of rules under which he wishes to live. We discuss how Buchanan's thinking on this issue was shaped by Frank Knight and G. L. S. Shackle and explain why Buchanan explicitly described his argument as ontological in nature. Finally, we contend that Buchanan's approach would have benefited from further ontological elaboration, in two ways: first, because his arguments would have been stronger had he said more about the attributes of the human agent that help to secure their engagement in thinking creatively about themselves and the rules of society ('the constitutional moment'), and second because his account would benefit from a deeper discussion of the interplay between human agency and social structure, especially with regard to the question of which structures might constrain or facilitate creative choices of the kind by which he set such great store.

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1. Introduction

Heterodox economists often criticise orthodox economics, and make the case for their preferred approach to economic analysis, by arguing that only the latter can capture and do justice to some important aspect of social reality (Lawson, 2003, pp. 168–83,

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2015; Lewis, 2004, 2017a, 2017b). One issue that has often featured prominently in such arguments concerns the nature of human choice. Representatives of many different heterodox schools have long argued that by portraying people's actions as a deterministic response to their circumstances, orthodox economic models exclude the possibility of genuine human choice (because the latter requires that people could have decided to act differently than they did in any given set of circumstances, something that is ruled out by standard rational choice theory). This argument has long characterised Austrian economics (Mises, [1949] 1966; Lachmann, 1977, 1986; O'Driscoll and Rizzo, 2015) as well as some varieties of Post-Keynesianism (Shackle, [1972] 1992, 1979; Davidson, 1996). It is also a long-standing feature of Old Institutionalism (Veblen, 1898; Hodgson, 1988) as well as the capability approach (Sen, 1987, 1997, 2002).[1] While not necessarily doing social ontology in the sense of engaging in an explicit, sustained analysis of the nature of social being, these economists are nevertheless invoking issues that can legitimately be described as 'ontological' in the sense that they are concerned with the nature of social reality (and the appropriateness of the methods used by orthodox economists for studying material of that kind).

An interesting and important example of this kind of argument can also be found in the writings of the Nobel Prize-winning economist James Buchanan, one of the founding fathers of public choice theory and constitutional economics.[2] In his work on public choice, Buchanan argues for the application of economic thinking to political processes, or as he puts it, for the analysis of 'politics without romance'. This involves starting with the assumption that people hold the same self-interested motivational profile in politics as they do in markets (Buchanan, 1979). On the basis of this behavioural symmetry, Buchanan argues that the crucial question political economists must answer concerns how citizens can ensure that government agents act in the 'public interest' and not just pursue their private interests (Buchanan, 1987, 1990). In this context, Buchanan advocates a constitutional economic approach whereby people are assumed to reason about social arrangements from an original position, lying behind a 'veil of uncertainty', choosing legal-political rules that constrain both their and the state's future conduct. Buchanan argues that in moments of constitutional choice, due to uncertainty about their future position within society, people will distance themselves from their narrowly defined self-interest and select among alternative rules in accordance with some generalisable criteria such as 'fairness' or 'efficiency' (Buchanan, 1987, p. 248).

In his enormous body of work—his collected writings comprise more than twenty volumes—Buchanan frequently transcends mainstream economics' narrow focus on market efficiency and, instead, delves into reflections on moral and political philosophy

[1] One way of summarising what these approaches have in common is to say that they are all committed to a view of the social world as an *open* system, in which sharp, stable event regularities of the kind, 'Whenever event or states of affairs *x*, then event of state of affairs *y*' are few and far between. And one prominent reason for the openness of the social world, on these accounts, is to be found in genuine human choice, which of course implies that if in any given situation *x* a person chose to do *y*, then s(he) could always have chosen some other course of action (not-*y*) (Lawson, 1997, pp. 8–11, 30–31, 185–86). For analyses of the stance taken by various heterodox schools on this issue, see for the case of Post Keynesian economics, Lawson (2003, pp. 168–83), Lewis and Runde (1999), and Dunn (2004); for Austrian Economics, see Runde (1993), Lewis (2005) and Lewis and Runde (2007); and for the capability approach, see Martins (2006, 2011).

[2] We will return later in the paper to the question of whether—and, if so, to what extent and how—it is accurate to portray Buchanan as having heterodox tendencies.

Dold (2018b). As Amartya Sen states: 'I think Buchanan is very impressive in terms of the breadth of his interest. In my judgement, he has done more than most to introduce ethics, legal political thinking, and indeed social thinking into economics. I have the greatest respect for Buchanan, even though I may disagree with him on a particular point' (Sen in Swedberg, 1990, p. 263). Similar to Sen's famous critique of homo economicus as a 'rational fool' (Sen, 1977), Buchanan is sceptical about the applicability of the standard model of man as a utility-maximiser to important realms of decision-making, precisely because it presupposes that people's conduct is a passive, deterministic response to their circumstances and thereby excludes the kind of creative choices Buchanan believes are central to important features of economic and political life. But Buchanan develops this line of argument in a quite distinctive way, focusing on the importance of creative choice for one particular aspect of social being, namely people's identity (understood as the kind of preferences they wish to have). For Buchanan, genuine human choice means that people have some scope for deciding upon the kind of person they will become, in particular by selecting the kind of preferences they will have. Adopting a model of choice that does justice to this artifactual aspect of human nature, as Buchanan ([1979] 1999) terms it, has (he believes) significant implications for economists' ability satisfactorily to understand important features of the social world, including both the development of institutions, especially constitutions, and also the feasibility of certain kinds of (paternalist) government policy. In this essay, we explore the significance of Buchanan's views about the nature of human choice and the artifactual character of human nature. In doing so, we investigate the (hitherto neglected) way in which Buchanan invoked ontological considerations both in criticising standard rational choice theory and also in setting out his own contributions to economics, both methodologically and at a more substantive level.

Immediately following this Introduction, in Section 2 of the paper, Buchanan's ontologically based critique of the model of people as utility-maximisers, and his account of artifactual man, will be outlined. Section 3 explores the significance of Buchanan's views about the nature of human choice for his constitutional economics, explaining how—in his view—it is only if people's artifactual nature is explicitly acknowledged that it is possible to do justice to the constitutional moment in political-economic life, that is to people's capacity to commit themselves to following a set of rules that will constrain their subsequent actions. Section 4 examines another way in which Buchanan's emphasis on ontology comes to the fore, namely in his critique of certain kinds of paternalist government intervention.

Section 5 discusses some tensions and shortcomings in Buchanan's account of personal constitutional choice, which arguably reflect the limitations of the social ontology to which he subscribes. For while Buchanan's portrayal of people as artifactual beings who are able creatively to choose their preferences marks a notable departure from orthodox economics, he nevertheless retains significant aspects of the substantive orthodox approach and its (implicit) social ontology. First, Buchanan effectively reintroduces the orthodox account by suggesting that people possess a higher-level preference ordering by reference to which they decide *rationally* what lower-order preferences they would like to have. Second, in focusing so much on human agency, Buchanan arguably neglects the role of social structures in facilitating the kinds of creative decision-making he believes are central to constitutional choice. More specifically, we argue that Buchanan fails to do justice to the ways in which people's capacity to make choices about their preferences, as well as their actual choices, is shaped by pre-existing social structures. The latter, we

contend, influence both the extent to which people are able and willing to reflect on their character and also the evaluative standards upon which they rely in doing so. This shortcoming in Buchanan's analysis arguably reflects the way that, like many heterodox economists, he questioned the orthodoxy's ability to do justice to certain important feature of social reality—in this case, human choice—but without systematically and explicitly developing a complete account of the ontology of the social world that could inform his own efforts to develop an alternative perspective (in particular, in Buchanan's case, without developing a satisfactory account of how human agency is shaped by pre-existing social structures). A more comprehensive account of the nature of social reality, of the kind provided by students of social ontology, can help to remedy this problem. More specifically, we argue in Section 6 that the more sophisticated account of the relationship between social structure and human agency provided by the critical realist transformational model of social activity provides the intellectual resources Buchanan arguably needed to do justice to the recursive relationship between preference formation processes and the social context in which people are situated (Lawson, 1997, pp. 30–32, 56–58, 166–70; Lewis, 2000; Lewis and Runde, 2007). Our paper is therefore a constructive critique in which we hope to show how paying sustained, explicit attention to ontological issues can help to deal with some of the shortcomings in Buchanan's approach. Section 7 concludes.

2. Buchanan on creative choice as an imaginative, open-ended enterprise

For Buchanan, genuine choice involves 'conscious selection from among alternatives' ([1969] 1979, p. 40). This requires that individuals could have decided to respond differently to their circumstances than in fact they did: 'Choice, by its nature, cannot be predetermined and remain choice … In a wholly determinist universe, choice is purely illusory, as is discussion about choice' ([1969] 1979, p. 40). The possibility of real choice therefore implies that a person's decisions cannot be a determinate response to antecedent conditions, but must instead involve the possibility of pursuing an alternative course of action to the one actually selected. In standard choice theory, however, where preferences are exogenously given and in conjunction with the constraints determine behaviour, 'the individual actor is genetically programmed to respond uniquely and predictably to the alternatives that are confronted; in this limit, "choice" in any meaningful sense disappears' (Buchanan, [1969] 1979). But '[a]s we move beyond this limit', Buchanan ([1989] 1994, p. 133) continues, '*individual choice* becomes possible, and indeterminacy replaces determinacy in any attempt to predict individual behaviour'.[3]

In emphasising the importance of genuine choice, Buchanan appears closely to resemble many of the heterodox schools whose views were briefly described above. However, he elaborates on the nature and significance of such choices in a distinctive fashion, as set out most clearly in his fascinating and important essay on 'Natural and Artifactual Man' ([1979] 1999). In that paper, Buchanan focuses on an aspect of human nature 'that seems to me to be too much neglected in modern economics', namely man's capacity for 'becoming different from what he is' ([1979] 1999, pp. 246–47):

[3] '[T]here is simply no way around the fundamental fact that whatever happens in the social realm is dependent on human choices, choices that—if they are *choices*—could be different' (Buchanan and Vanberg, 1991, p. 171).

> [W]e, as human beings … know that we can, within limits, shape the form of being that we shall be between now and the time of death … We are, and will be, at least in part, that which we make ourselves to be. (Buchanan, [1979] 1999, p. 247)

This capacity to forge one's character, within the constraints imposed by human biology, reflects what Buchanan refers to as man's 'artifactual' nature: 'I have used the term *artifactual* here precisely for the purpose of allowing some recognition of the basic constraints of human nature while, at the same time, allowing for wide areas of choice within these constraints, areas within which we can, and do, construct ourselves as individuals, from the base constructed for us by our forebears'.[4]

Buchanan illustrates the kind of behaviour he has in mind by considering a repentant smoker. The individual 'can surely imagine himself or herself freed of the habit, with a transformed set of preferences that would not include any desire to smoke'. If he acts to realise this vision, for example by committing himself to a rule that prohibits smoking, then 'he will find that he does become different from the person he was. His preferences shift; he becomes the non-smoker that he had imagined himself capable of becoming' ([1979] 1999, p. 253). On this view, people are capable of stepping back and gaining a measure of critical distance from their preferences, evaluating and modifying them in order to resemble more closely the kind of person they would like to be. Buchanan argues that behaviour of this kind cannot be understood using standard choice theory. For the latter presupposes that people's preferences, and the utility functions that represent them, are stable, thereby ruling out the very changes that artifactual man is bent upon making.[5] Hence, in Buchanan's opinion, 'modern economic theory forces upon us patterns of thought that make elementary recognition of the whole "becoming" part of our behaviour very difficult to analyse and easy to neglect' ([1979] 1999, p. 247, also see p. 251).[6]

[4] Buchanan ([1979] 1999, p. 255) borrows the term 'artifactual' from the work of political scientist Vincent Ostrom ([1976] 2012, pp. 14–15; also see Ostrom, 1980). For a brief overview of the relationship between Buchanan and the work of Vincent Ostrom, and his wife Elinor, see Aligica et al. (2017, pp. ix–xi).

[5] The paradigm of this view is of course Stigler and Becker (1977). Peter Boettke (personal communication) reports that Buchanan stated in lectures and seminars that 'Natural and Artifactual Man' originated as a referee's report for the *Journal of Political Economy* on the Stigler-Becker paper.

[6] Buchanan does not reject orthodox choice theory entirely, arguing that there remains a realm of *reactive* choice to which it does apply (Buchanan, [1989] 1994, pp. 132–34; Buchanan and Vanberg, 2002, p. 123). As Buchanan admitted, his views about the range of actions to which standard choice theory applies changed over time, from the acute scepticism about its usefulness expressed in some of his earlier papers (Buchanan, [1969] 1979, [1979] 1999, p. 257, 1982) to his later view that there remained significant aspects of economic life to which it could be fruitfully applied (Buchanan, [1989] 1994, pp. 132–34; Buchanan and Vanberg, 2002, p. 123). It is also noteworthy that, even in the 1960s, Buchanan was sympathetic towards what he described as the 'logic of choice', understood as the idea that 'the individual decision-maker will select that alternative that stands highest on his preference ordering' ([1969] 1979, p. 41, 42), an ordering the economist can assume to be stable only for the logical moment of analysis. Buchanan argues that even though such an approach 'makes no attempt to specify preference orderings for particular choosers' it nevertheless facilitates the deduction of 'meaningful statements' such as 'the law of demand' ([1969] 1979, p. 42). In this 'logical theory', Buchanan contends, 'no objectives are specified' so that '[c]hoice remains free, and because of this, remains choice' ([1969] 1979, p. 43). However, as soon as the analyst attempts to move beyond the pure logical aspect of choice to develop an 'abstract science of economic behaviour' by imputing specific motives to people—in the form of particular preferences or a specific utility function—'genuine choice is removed from the theory' and all that remains is 'behaviour, not choice' ([1969] 1979, p. 44). Whatever the significance and sustainability of the distinction between 'the pure logic of choice' and 'the abstract science of economic behaviour', what is important for our present purposes is that Buchanan did not deviate from his opinion that standard choice theory was incapable of doing justice to the artifactual nature of man. For an attempt to specify the domain of reactive choice, which defines it in terms of so-called 'small-world' behaviour involving repeated choices in similar situations with meaningful feedback, see Dold and Rizzo (Forthcoming).

The initial inspiration for Buchanan's account of artifactual man derived from his mentor Frank H. Knight (Dold, 2018a, p. 164), who—in a number of articles—developed a dynamic understanding of individual choice.[7] Knight argued that man 'is an aspiring rather than a desiring being' (1922, p. 472). That is to say, he does not strive simply to satisfy given *desires*, but also *aspires* to hold 'better' preferences. In doing so, man 'is a being who seeks, and in a real sense creates, values. The essential significance of this is the fact that man is interested in changing himself, even to changing the ultimate core of his being' (Knight, [1942] 1982, p. 281). This innate striving for 'better wants' leads to an intentional dynamism in human conduct: once an end is attained, it becomes the foundation for 'better' ends. Knight ([1942] 1982, p. 278) concludes that preferences 'may be taken as "given" for a given subject at any moment of action, [yet] in a larger view and a longer run they are not given, but changing'. Buchanan summarises the Knightian account of individual choice as 'man's tendency to want to want better things, to become a better man' (Buchanan, [1979] 1999, p. 251).

In elaborating on Knight's ideas, Buchanan also drew on the work of the English economist G. L. S. Shackle.[8] Genuine choice, for Shackle (1972] 1992, pp. 122–23), requires that people's conduct must not simply be a mechanical response to their circumstances. On the contrary, for choice to be possible, people must able to imagine goals, and ways of achieving them, that are new in the sense of not being implied by, or implicit in, their prior circumstances (Shackle, 1976, pp. 309–17, 1979, pp. 48–53). 'Choice is necessarily made amongst works of thought, of imagination', Shackle (1979, p. 2) contends, going on to argue that once they have settled on a particular vision of the future as the one to pursue, people then act so as to remove obstacles to its realisation and to put in place the conditions required for it to be achieved (1979, pp. 2, 7, 11–12).[9] In this way, Shackle maintains, people are able to change the course of events in the world, forging their own history rather than passively acquiescing to one that is preordained ([1972] 1992, pp. 350–55, 364–65, 1976, p. 312).[10]

It is 'in his emphasis and insistence on the indeterminacy of choice' that Buchanan believes lies Shackle's 'essential contribution' (Buchanan, [1989] 1994, p. 134; also see Buchanan, 1982, p. 18). Following Shackle, Buchanan argues that far from trying to

[7] Most notably, in his 'Ethics and the Economic Interpretation' (1922) and 'Fact and Value in Social Science' (1942).

[8] Writing in 'Natural and Artifactual Man' about the influences that had shaped his views about human nature, Buchanan comments as follows: 'What I have done is to marry [the Knightian] discussion of man's desire to modify his own being, with what may be called a subjective or even neo-Austrian theory of time and choice. In the latter, I have been influenced by G. L. S. Shackle, whose difficult but idea-packed book *Epistemics and Economics* I have been struggling to get through this summer. I have also had access to Shackle's (1976) Keynes lecture to the British Academy, "Time and Choice" ([1979] 1999, p. 251). Buchanan refers to Shackle ([1972] 1992) and Shackle (1976). Elsewhere, he also refers to Shackle (1961, 1979, 1983). See Buchanan ([1969] 1999, pp. 35–36), Buchanan ([1989] 1994, p. 134) and Buchanan and Vanberg (1991, pp. 171–72), respectively.

[9] Buchanan ([1989] 1994, p. 131) approvingly quotes Shackle (1988) as follows: 'The elemental thing we study is *choice*. If choice means anything, it means *origination*. The making of history (on however small a scale) is the making possible one path of affairs rather than another. By origination, I would say (and here take a decisive step outside all orthodoxy, even the Austrian) we ought to mean an act of thought as a *first cause*, so that choice in its essential nature is unpredictable in its effects, its sequel. Many "choices" are of course a response or obedience to habit or simple reckoning. By choice we ought to mean a *momentous* act of thought. If such an act is truly originative, it cannot be foreknown in character or timing, and thus we are essentially denied the power to specify the sequel of any present choice as a singular path (1988, p. 206).'

[10] For a more detailed summary of Shackle's views on choice, see Lewis (2017b, pp. 2–6).

realise pre-existing goals, as embodied in a given set of preferences or utility function, people use their imagination to create their own goals and, therefore, their own history, in ways that defy efforts to portray them as mechanically responding to pre-existing circumstances:

> [W]e must ... acknowledge that men can choose courses of action that emerge only in the choice process itself. Men create value by the imagination of alternatives that do not exist followed by action that implements the possibilities imagined. (Buchanan, 1982, p. 17; also see Buchanan, [1969] 1999, p. 35; [1979] 1999, p. 252, 258; and [1991] 1999, p. 287)

Such choices, which do not exhaust all kinds of choice, are '*creative* in that a sequence of events was made possible, a sequence that did not exist prior to the choice and that was brought into being, literally, by the choice itself' (Buchanan, [1989] 1994, p. 132). Only approaches, such as Shackle's, that 'allow for some recognition that persons imagine themselves to be other than they are and that they take action to achieve imagined states of being' can do justice to behaviour of this kind ([1979] 1999, p. 253).[11]

Significantly, in a later essay entitled 'The Foundations for Normative Individualism', Buchanan explicitly states that, for reasons to be discussed below, his critique of standard economics is an ontological one. In standard choice theory, Buchanan argues, '"utility"', or more generally "that which is maximized," has a presumptive existence that is independent of any exercise of choice':

> Implicit in this whole construction is the ontological assumption that there is 'something'—whether called a utility function or not—that exists and can, at least conceptually, be objectified and separated from individual choice. (Buchanan, [1991] 1999, pp. 282–83; also see Buchanan, [1976] 1979, pp. 86–88)

But this ontological presupposition—'which I *do not* accept'—is quite at odds with what is required to understand the conduct of artifactual man, whose preferences emerge through the process of choosing and whose very essence lies in his capacity to construct new goals (Buchanan, [1991] 1999, p. 283).[12] 'From a subjectivist perspective', Buchanan ([1991] 1999, p. 286) explains, 'a "utility function", as such, does not exist which, even conceptually, could be observed and recognised independently of an individual's choice behaviour'.[13]

[11] Buchanan elaborates on this line of criticism by arguing that 'what I am objecting to in modern economic theory is its *teleological* foundations, its tendency to force all analysable behaviour into the straightjacket of 'maximizing a utility or objective function under constraints' ([1979] 1999, p. 250). In addition to criticising standard choice theory for its teleological orientation, Buchanan elsewhere advances similar criticisms of the orthodox theory of the market, in particular general equilibrium theory, for attempting to conceptualise social order in terms of a predetermined equilibrium or telos—existing independently of the market process itself, rather than being created through it—towards which the economy is thought to gravitate (Buchanan, [1982] 1999; Buchanan and Vanberg, 1991, pp. 172–74, 179–83). He also levels similar charges against standard welfare economics, in particular for its teleological concern with maximising a given 'social welfare function' (Buchanan, [1964] 1999).

[12] As Buchanan put it elsewhere, 'Once individual utility functions are formally specified, individuals whose behaviour is thereby depicted cannot choose differently. Choice, as such, cannot remain in any such formulation' (1982, p. 11).

[13] In focusing on the existence, or lack thereof, of stable utility functions, Buchanan's discussion of artifactual man ignores many other ontological issues raised in the literature on personal identity, such as in what sense if any a person whose character changes over time remains the same person. For a discussion of such issues in the context of the discipline of economics, see Davis (2011).

In essays such as 'Natural and Artifactual Man' and 'The Foundations for Normative Individualism', therefore, Buchanan is engaging in a critique of the ontological presuppositions of orthodox choice theory, in particular the latter's view that people have a stable set of preferences or utility function that exists independently of their own choices. Buchanan believes that this presupposition does not always hold and that as a result orthodox choice theory provides a misleading account of people's conduct in some important instances.[14]

In the next section of the paper, we will explain why Buchanan believes that it is so important to do justice to the artifactual nature of human beings. For Buchanan, it is only if this aspect of human nature is acknowledged that it is possible to provide a satisfactory analysis of an important facet of human endeavour, namely 'constitutional choice' (i.e. the choice of rules that bind individual and/or collective behaviour).

3. Artifactual man and the constitutional moment in political economy

Buchanan reports in 'Natural and Artifactual Man' that he was prompted to reflect on the methodological issues raised in that paper by a desire to 'explain satisfactorily to myself just why … the "constitutional attitude" seems so foreign to so many of my fellow economists'. By the term 'constitutional attitude' Buchanan means 'the attitude that we *create* the institutions within which we interact, that we construct the rules that define the game that we all must play' ([1979] 1999, p. 255). Developing a 'constitutional attitude' means that an individual recognises a sense of responsibility to engage in constitutional choice. It can take place on two levels, 'the "constitution of private man," which roughly translates as "character," as well as "the constitution of public men," which translates into the necessary underpinning of a free society, the "character" of society, if you will' (Buchanan, [1979] 1999, p. 252). While Buchanan acknowledges that individuals are constrained to some extent by their biological nature, there still remains scope for them to imagine themselves as products of their own making and act accordingly.[15]

Constitutional choice involves the capacity, central to artifactual man, to depart from routine utility maximisation and, like the smoker in Buchanan's earlier example, impose constraints on one's own conduct. For Buchanan, as we have seen, behaviour of this kind cannot be reduced to routine utility maximisation and is therefore unintelligible to those whose analytical vision is confined to orthodox choice theory:

[14] 'If we acknowledge that choice may be creative rather than reactive, and that at least some actors in the economic process can be expected to act creatively if given the opportunity, it becomes clear that the presuppositions of the neoclassical paradigm are misleading' (Buchanan and Vanberg, 2002, p. 123). It is worth noting at this point in our argument that while Buchanan opposes the idea that people's preferences are inherently stable and necessarily predate choice, he does believe that artifactual man possesses certain capabilities that differentiate him from other animals and that facilitate his efforts to forge his own character: the ability to imagine various possible alternative futures; the capacity to assess their relative merits; and the ability to impose upon himself self-constraining rules—a personal constitution—that will over time enable him to modify his character in the desired fashion (e.g. Buchanan, [1979] 1999, pp. 247, 253–55). We return to this point in Section 5.2, when we argue that Buchanan's failure to develop a satisfactory account of how human agency is shaped by pre-existing social structures limited his ability to do justice to the way in which the development of such capabilities is facilitated or hampered by certain kinds of institutional arrangements.

[15] 'Once all of the possible constraints are accounted for (historical, geographic, cultural, physical, genetic, sexual), there still remains a large set of possible persons that one might imagine himself to be, or might imagine himself capable of becoming. There is room for "improvement", for the construction of what might be' (Buchanan, [1979] 1999, p. 250).

I was led to ask, however, whether persons who do not and cannot conceive themselves to be artifactual (even if, in fact, they are and must be), can easily conceive of artifactual social institutions, artifactual rules of the game, to be chosen apart from the simply selection of strategies to be played in the complex interaction process defined by the rules of the order. Does the manner in which men model their own behaviour affect, and perhaps profoundly, the way that they model the social institutions under which they live? If individuals conceive themselves in the teleological image of modern economics, can they shift gears to a nonteleological image of a community? (Buchanan, [1979] 1999, p. 256)

Buchanan concludes that 'the non-teleological elements of individual choice' that are so central, on his account, to artifactual man's efforts to construct both himself and the constitution within which he acts 'have been too much neglected by us all' ([1979] 1999, p. 257). On this view, the model of man presupposed by standard choice theory impedes our efforts to understand the constitutional moment in political-economic life. Once a different ontology is adopted, however, and man is conceived as an artefact who constructs himself through his own creative, open-ended choices, then 'it becomes relatively easy for him to envisage changing the basic rules of social order in the direction of imagined good societies' and the constitutional moment can be subject to fruitful analysis (Buchanan, [1979] 1999, p. 258; also see Buchanan and Vanberg, 2002, pp. 125–27).

For Buchanan, this picture of artifactual man gives rise to a distinctive argument for individual liberty that is denied theorists who remain confined to the orthodox framework. According to Buchanan, because *homo economicus* does not reflect upon and evaluate his or her preferences, but simply strives to maximise a given utility function, (s)he will be unconcerned about the size of the choice set from which (s)he selects. Things are very different in the case of artifactual man, however, who—as we have seen—chooses from among many imagined futures and does so moreover in the face of evolving preferences as well as radical uncertainty about the consequences of his or her decisions (Buchanan and Vanberg, 1991, p. 171). Such a person 'has a clear interest in seeing that the choice set, the set of alternative imagined futures, remains as open as is naturally possible, and, if constrained, that the constraints be also of his choosing' (Buchanan, [1979] 1999, pp. 258–59):

Man wants liberty to become the man he wants to become. He does so precisely because he does not know what man he will want to become in time. Let us remove once and for all the instrumental defense of liberty, the only one that can possibly be derived directly from orthodox economic analysis. Man does not want liberty in order to maximise his utility, or that of the society of which he is a part. *He wants liberty to become the man he wants to become*. (Buchanan, [1979] 1999, p. 258; also see Buchanan and Vanberg, 2002, pp. 123–25)

In the hands of Buchanan, therefore, the social ontology or account of human nature that portrays man as an artifactual being underwrites a commitment to a liberal social order, in which people are granted the freedom to forge and reforge their characters as they see fit.[16]

[16] In recent years, Sugden (2018a, 2018b) has systematically developed Buchanan's 'opportunity set' approach to liberty. In light of behavioural economic evidence on evolving and context-dependent preferences, Sugden argues that the normative criterion in welfare economics should not be 'preference satisfaction', but 'choice opportunity': 'Roughly speaking, the aim should be to set up institutions that give individuals as much opportunity as possible to do whatever they want to do, both in their actions as separate individuals and in voluntary transactions with one another. In designing these institutions, there is no need to consider what individuals' preferences in fact are: the aim should be to ensure that individuals are able to act on *whatever* preferences they may happen to have in any particular context, at any particular time. Or, as Buchanan might put it, there is no need to talk about preferences at all; all that matters are opportunities to choose. Whether or not an individual's choices can be rationalised by context-independent preferences is beside the point' (Sugden, 2018b, pp. 34–35).

In the next section of the paper, we will underline the fact that Buchanan's case for individual liberty is based on an ontological argument by considering his response to paternalists who argue for the curtailment of individual liberty on the grounds that people do not always know what is good for their own well-being. As we shall see, Buchanan seeks to undermine such epistemic arguments by referring explicitly once again to ontological issues, in particular the fact that people are artifactual beings who do not have a stable utility function.

4. The foundations of normative individualism: ontological, not epistemic

In 'The Foundations for Normative Individualism' Buchanan seeks to distance himself from what he refers to as 'epistemic individualism' (i.e. from arguments for a liberal society that rest on claims that the individual knows better than anyone else what is best for his or her own well being) (Buchanan, [1991] 1999, p. 282). Buchanan argues that this epistemic case for individualism is vulnerable to criticism on the grounds that individuals do not in fact always enjoy privileged knowledge of their own true preferences or utility function and that some better-informed authority is justified in curtailing the individual's freedom in order to promote his or her own well-being more effectively than can the individual him- or herself ([1991] 1999, pp. 283–86).

Faced with such grounds for disputing individual freedom, Buchanan's goal is 'to suggest that foundation for a normative individualism is not epistemic … [but] ontological' ([1991] 1999, p. 286). Buchanan first of all identifies the ontological presupposition that undergirds both epistemic individualism and paternalism, namely that the individual possesses a set of preferences or utility function that exists independently of any actual choices (s)he makes. '[O]nly within this ontology does the conflict between epistemic individualism and its potential alternatives assume relevance', Buchanan argues, elaborating as follows:

> Only if it is presumed that an individual's choice behaviour and the utility function exist as conceptually separate things does it make sense to raise the question as to whether the individual or some third party or parties can most reliably identify the choices that are defined as 'best' in terms of the given utility function. (Buchanan, [1991] 1999, p. 283)

However, as explained above, the claim that people have preferences or utility functions that exist independently of their choices is one Buchanan rejects: 'My own ontological presuppositions do not allow any conceptual separation or distinction between an individual's choice behaviour and his or her utility function … All there is are individual choices' ([1991] 1999, p. 286). Buchanan's artifactual man lacks the stable maximand that might, depending on who is best placed to gain epistemic access to it, provide a rationale for limiting individual freedom. Hence, according to Buchanan, 'the issue of epistemic individualism … has no bearing on my ontological perspective; the individual chooses that which he chooses, and there need exist neither prior nor posterior "knowledge" that enables any choice to be classified as "correct" or "incorrect" against some criterion of well-being' ([1991] 1999, p. 287).

What we can see here is Buchanan making an explicitly ontological argument, identifying—and rejecting—the ontological presuppositions of epistemic individualism, and paternalist interventionism, in favour of an alternative portrayal of man as an artifactual creature who lacks the stable maximand assumed by those other two approaches. As described in the previous section of this paper, Buchanan believes that

his own account of man as capable of making creative, open-ended choices provides a distinctive rationale for normative individualism and a liberal constitutional order. However, as we argue below, Buchanan's account suffers from internal tensions. His notion of what individuals must be like to engage in creative decision-making, especially in moments of constitutional choice, is arguably under-developed, as is his account of the role of social structures in facilitating and constraining those choices.

5. Some tensions in Buchanan's ontological position

Buchanan's ontological position departs radically from standard economics in that he regards 'choice as a process in time [that] is inseparable from the evolution and self-development of the individual' (Rizzo, 2014, p. 135). In Buchanan's account, it is helpful to distinguish between creative choice in the sense of preference formation (at the individual level) and the creative choice of social rules (as in constitutional decision-making) (Brennan and Buchanan, 1985, 67 ff.). In both cases, individuals may choose to restrict future behaviour, as for example in the private case of the smoker who opts for self-constraining mechanisms or in the public case where people choose the rules that will regulate their social interactions. In doing so, individuals can become the person they want to become (e.g. a non-smoker) or achieve social outcomes that are Pareto superior to the status quo (as when a group of individuals agrees unanimously upon a clearly defined set of rules which makes everybody better off due to reduced potential for conflict and rent-seeking). In order to keep the scope of this paper manageable, the following sections will focus on *private* constitutional choice (i.e. rules that bind individual actions) and not *public* constitutional choice (i.e. rules that bind political actions). This follows the logic of Brennan and Buchanan (1985, p. 73) who state that understanding 'the private-choice calculus of the individual … is helpful in introducing the more complex calculus of the individual confronting the public- or social-choice setting'.[17]

The implications of this account that we have discussed so far are largely 'negative', taking the form of (Buchanan's) arguments *against* epistemic paternalism and in favour of *freedom from* interference. An obvious question to ask is whether Buchanan's account also has 'positive' implications with regard to the institutional prerequisites for *making* personal constitutional choices (i.e. choices that involve a person seeking to constrain his/her behaviour by committing him- or herself to following a particular rule, as for example when the repentant smoker sought to follow a rule prohibiting smoking). More specifically, one might enquire about the institutional regime under which people are able to acquire the capability to make such choices. Buchanan himself does not systematically address this issue. Arguably, this is due to the fact that, as argued below, Buchanan's account of human action in general, and constitutional choice in particular, over-emphasises the role of autonomous human agency and so fails to do justice to the way in which people's capacity to make choices is shaped by the pre-existing social structures in which they are embedded.

We will argue in this section that his approach would have benefited from further explicit ontological elaboration in two regards. The first issue concerns the nature of

[17] For a discussion of the connection between character development and *public* constitutional choice in Buchanan's framework, see Dold and Petersen (2020).

the agent who can actually engage in 'constitutional choice'. In conceptualising such choices, as we shall see, Buchanan falls back on a notion of 'rational' choice, based on so-called meta-preferences. This creates some tension with his open-ended process view of choice. The second, related issue concerns Buchanan's relative neglect of the way that social structures and institutions hamper or encourage individuals to develop the ability to think in a constitutional manner and to actively shape their future preferences. In writing about artifactual man, Buchanan focuses principally on human agency and the 'rational' choice of rules. He has little to say about how the social environment shapes processes of preference formation and influences people's ability to engage in constitutional thinking.[18]

5.1 Constitutional choice and meta-preferences: an incomplete escape from orthodox choice theory

We have argued in the first half of this paper that Buchanan embraces the idea that people are genuine agents who create their preferences over time. However, notwithstanding his criticisms of orthodox economics as being unsuited to the task of conceptualising creative decision-making of this kind, Buchanan ultimately resorts to the orthodox way of modelling such constitutional choices.[19] Buchanan argues that at the moment of constitutional choice, individuals can rationally evaluate future sets of choice alternatives, assuming that people possess a set of (higher-level) *meta-preferences* by reference to which their long-term interests can be evaluated. On this view, constitutional choice imposes

> constraints on future-period behavior [which] may emerge from the rational calculus of a person … The individual may precommit himself to choices that are deemed more worthy in a long-range perspective than a pattern of purely situational responses. (Brennan and Buchanan, 1985, p. 70)

For Buchanan, rationality implies 'that choices may be analyzed as if an ordering of alternatives exists, arrayed in accordance with some scalar *of preferredness*' (Buchanan, 1990, p. 14). Buchanan accepts these meta-preferences as the 'scalar of preferredness' for reasoning about future actions. In doing so, he presupposes that there exists a *rational planning self* with well-defined preferences over moral rules and precommitments that foster 'the achievement of a preferred life plan' (Brennan and Buchanan, 1985, p. 74). This planning self deliberately constrains his/her future acting selves who might otherwise suffer from psychologically-induced 'errors' in the implementation of his/her meta-preferences (for instance, in the form of sloth, temptation or weakness of will).[20]

[18] Of course, in his substantive accounts of the market process, and of post-constitutional decision-making, Buchanan acknowledges the importance of social rules in shaping and facilitating people's interactions. But as we shall argue below, he does not do so satisfactorily in his analysis of personal constitutional choice.

[19] For Buchanan (1990, p. 14), rational choice belongs to the 'hard core' of his constitutional political economy project: 'Concomitant with methodological individualism as a component of the hard core is the postulate of rational choice, a postulate that is shared over all research programs in economics'.

[20] Brennan and Buchanan (1985, p. 72) give the following example: '[C]onsider Crusoe alone on his island (before Friday). He may deliberately choose to sleep on the beach at a location where the morning tide will rudely awaken him. By sleeping in such a place, Crusoe precommits himself to start the next day's work early. He closes off the option of deciding when to get up because his life plan includes work rather than sloth, and he wants to remove temptation of the latter'.

Buchanan conceptualises meta-preferences as a higher-level utility function: 'think of a person who chooses to impose upon his or her own choices an artificial preference function, who explicitly adopts rules or norms for choosing among options that exclude some otherwise available options from the choice set' ([1989] 1999, p. 447). Consequently, Buchanan assumes that individuals can evaluate their post-constitutional preferences in periods $t_1 \ldots t_n$ by reference to the degree to which they reflect the meta-preference function which the individual has constructed at t_0, arguing that

> [p]ersonal examples abound. A person really prefers the calorie-laden dessert, but also wants to maintain or achieve a desirable weight. The 'higher' preference, losing weight, constrains the preference for sweets … The revealed preference against sweets may reflect a prior *preference for preferences*. ([1989] 1999, p. 447, emphasis added)[21]

However, the introduction of meta-preferences gives rise to a significant tension in Buchanan's account. On the one hand, Buchanan criticises standard economics for assuming that preferences are stable. On the other hand, he himself assumes a form of preference stability at the level of meta-preferences. This contradicts Buchanan's earlier ontological presuppositions which 'do not allow any conceptual separation or distinction between an individual's choice behaviour and his or her utility function' ([1991] 1999, p. 286). Some might want to defend Buchanan by arguing that higher-order preferences exist only at the moment of constitutional choice. Yet this would not give them the conceptual status that Buchanan attributes to them when he contends that they form a normative benchmark that 'guide[s] both present- and future-period choices' (Brennan and Buchanan, 1985, p. 71).

Nor is it obvious how, given the epistemic challenges involved, individuals can gain 'psychological access' to these long-term preferences. Buchanan himself admits that 'constitutional choice is necessarily more comprehensive than in-constitutional choice' ([1989] 1999, p. 447): constitutional choices are long-term (i.e. rules apply to a series of future actions) and general (i.e. rules hold across different decision situation). The future 'state of the world' (the set of choice alternatives) is uncertain and a person's future 'will or character' (i.e. their preferences) is to some degree unknowable at the time of choice. A person in some future period t_n is not the same person who confronted the constitutional choice at t_0, and '[r]ationality precepts require that this temporal interdependence be recognized' (Brennan and Buchanan, 1985, p. 70) when the initial choice for a self-constraining rule is made.[22] Again, the way Buchanan attempts to capture the notion of rationality in this dynamic setting is by assuming meta-preferences that allow the individual to evaluate their lower-level preferences. But why should these meta-preferences be well-defined and have a higher normative force than in-constitutional choices? These higher-order preferences may well also be unstable, context-dependent, and prone to framing issues at the moment of constitutional choice

[21] In 'The Reason of Rules', Buchanan puts it similarly: '… if current-period choices are acknowledged to affect the choices to be made in subsequent periods, the analysis must involve a "preference for preferences." Some futures must be deemed better than others, and choices in the present will tend to reflect these preferences'. (Brennan and Buchanan, 1985, p. 71).

[22] At t_n, the individual will be a 'product' of choices that have been made over the whole sequence of periods t_0, t_1,..., t_n. In the moment of constitutional choice at t_0, the planning self has to try to take this path dependency into account when seeking rules that make certain actions costly to the future selves or prohibit certain behaviour based on an overall life plan.

(Loewenstein and Prelec, 1992).[23] In addition, these long-term preferences might be 'expressive' in the sense of reflecting 'utopian' desires that neglect the actual costs (and benefits) of later choices, in which case when people reason about their future, they will not be constrained by the 'discipline of costs' (Wicksteed, 1910, pp. 28–36).[24]

Finally, we have to ask where does the 'meta-self' within the 'self' come from, that is to say, what is the ontological status of those meta-preferences? Do they depend on first-order preferences or can they be developed and established independently? The former might imply that they do not provide an independent standard for evaluation and the latter that people can also develop preferences for meta-preferences. In sum, the concept of meta-preferences seems to provoke more questions than answers, but Buchanan ignores these complexities in his construction of a higher-order rationality. Therefore, it is not entirely clear how his way of modelling the intrapersonal dynamics of decision-making based on meta-preferences maps onto the actual decision-making of human beings, which is to say that his account stands on shaky ontological grounds.[25]

5.2 Artifactual man, capabilities and the private constitutions of values

Buchanan acknowledges that constitutional choice presupposes that individuals possess certain cognitive capabilities. First, man needs to be able to 'envisage himself as a product of his own making, as embodying prospects for changing himself into one of the imagined possibilities that he might be' (Buchanan, [1979] 1999, p. 258). Second people also need to believe that they can improve over time, that is, 'persons must recapture an ability to imagine themselves capable of becoming "better" persons than they are' (Buchanan, [1979] 1999, p. 254). This sense of 'betterness' requires the ranking of possible futures. When 'thinking about realizable prospects, a person [needs to be] able to rank these in some fashion, to classify members of the set as "better" or "worse"' (Buchanan, [1979] 1999, p. 250). Third, after ranking the prospects, individuals must be able to envisage self-constraining mechanisms that will enable them to achieve the desired state in the future. Buchanan gives the example of the intentional selection of a set of moral precepts in moments of constitutional choice that can guide future-period choices:

> To the extent that a person establishes a coherent and subjectively meaningful morality, and draws on intellectual and emotional resources in the legitimization and justification of this morality in a manner designed to leave quasi-permanent residues, he will succeed in increasing the costs of any future-period departures from the life plan partially described by adherence to the precepts of such morality. (Brennan and Buchanan, 1985, p. 71)

This shows the extent to which Buchanan believes in the capability of self-constitution. People are agents who choose for themselves a 'coherent and subjectively meaningful morality' by drawing 'on intellectual and emotional resources in the legitimization

[23] Frankfurt (1971, p. 13) discussed the possibility of instinctual meta-preferences, such as when 'a person may be capricious and irresponsible in forming his second-order volitions and give no serious consideration to what is at stake'.

[24] This provides a good reason to doubt that one type of preference must always prevail over the other—that is, that the individual should always follow his/her second-order preference (e.g. for running outside) rather than his first-order preference that reflects the actual costs (e.g. of running when it is raining heavily outside).

[25] See Frankfurt (1971) for a classic discussion of meta-preferences. For a critique of the concept of meta-preferences, see Whitman (2004).

and justification of this morality'. This kind of personal constitutional choice is cognitively and motivationally demanding. Buchanan assumes that individuals develop an interest in reflecting upon their own character and transcend their current preferences to actively shape their future actions. In addition, and this is crucial for our argument, Buchanan assumes that individuals deliberately and autonomously choose their own morality or evaluative standards for future actions. According to Buchanan's analysis of private constitutional choices, 'constraints on future-period behaviour may emerge from the rational calculus of a person who remains totally isolated from other persons' (Brennan and Buchanan, 1985, p. 73).

A careful reading of Buchanan reveals a few instances where he admits that social structures matter, as for instance when he contends that 'any individual's formation of values may be influenced by the values of those with whom he or she is variously associated in communities' (Buchanan, 1990, p. 13).[26] Buchanan ([1979] 1999, p. 254) also acknowledges the crucial role of socially shared ideas that foster the creative imagination of the 'artifactual man' (e.g. the American dream established generally accepted standards of 'betterness' that contributed to a creative mindset that motivated individuals to become 'better' persons). However, ultimately, Buchanan believes that individuals choose a selection of the existing evaluative standards for their own 'private constitution' in a *deliberate* and *autonomous* way: '[we] can, upon reflection, evaluate, criticize, and ultimately change the rules that describe "the constitution of our values"' (Buchanan, [1989] 1999, p. 452). Buchanan clarifies that his 'starting point for analysis is a set of autonomous individuals' (1990, p. 16); it is not the socially embedded individual, but individuals as 'independent units of consciousness, capable of assigning values to alternatives, and capable of choosing and acting in accordance with these values' (1990, p. 16).

As already noted, Buchanan thinks that constitutional choice presupposes certain capabilities, such as *creative imagination*, *valuation* and *selection* of rules for future action. He mentions briefly that social structures shape values in a community and shared social ideas, such as the American dream, might have an influence upon the development of people's capabilities. However, in stressing the deliberate choice of 'private constitutions of values', Buchanan neglects a thorough analysis of the social structures that foster the development of those capabilities and bypasses a deeper discussion of social influences on individual processes of self-constitution. In focusing so intently upon creative human agency, Buchanan arguably underplays the way in which informal social rules existing prior to the moment of constitutional choice influence people's capacities to make such choices and thereby shape individual processes of preference formation and constitutional decision-making (Gaus, 2018). To put it slightly differently, Buchanan's rational choice account of constitutional choice comes at a price; it emphasises human agency so much that it neglects the various, important ways in which that agency, and the agents who exercise it, are shaped by pre-existing social structures.

[26] Indeed, as a referee pointed out, Buchanan himself acknowledges that the notion of artifactual man as an individual who enjoys a measure of autonomy in deciding how to behave, and who to become, is itself socially constituted, bearing the imprint of 'the wisdom of the eighteenth century' (Buchanan, [1979] 1999, p. 252).

6. The transformational model of social activity

A model of human action that captures such insights is known as the *transformational model of social activity* (Lawson, 1997, pp. 30–32, 56–58, 166–70; Lewis, 2000, pp. 250–52, 257–60; Lewis and Runde, 2007, pp. 179–83). According to the latter, people continuously draw on social structure in order to act, while in the course of doing so they contribute either to the reproduction or the transformation of those structures (as for example when business people draw on the rules of the legal system in order to make the contracts required to carry out their entrepreneurial projects, thereby also reproducing—or, on occasions, transforming—those rules). On this view, social structure and human agency are ontologically distinct but mutually dependent or recursively related features of the social world: each is both a cause, and a consequence, of the other, with causality moving both from structure to agency (in virtue of the way preexisting social structures facilitate and constrain human agency) and also from agency to structure (because the continued existence of social structures hinges upon human action). The transformational model thus avoids two polar extreme positions in social theory: voluntarism, whereby social structures are conceptualised as being created *ex nihilo* by human agency and therefore as exerting no influence on people's attributes or behaviour; and determinism (according to which people are so thoroughly socialised that they have no capacity to exercise genuine agency, their characteristics and actions being completely determined by the social structures in which they are situated). In charting a course between these two extremes, and so avoiding in particular the voluntaristic over-emphasis on human agency into which Buchanan sometimes lapses, the transformational model provides the basis for dealing with some of the shortcomings in Buchanan's approach identified above.

By providing a conceptual framework that explicitly acknowledges the socially constituted nature of individuals, recognising social structures as an ontologically distinct, causally efficacious and explanatorily irreducible part of the social world, the transformational model provides a way of incorporating the influence of social structures on human agency into the analysis of constitutional choice (as distinct from the rather haphazard way in which Buchanan addresses such issues). That influence includes the way that preexisting informal norms shape individuals' *evaluative standards* for rules. The standards that allow someone to evaluate their preferences are not the standards of an isolated agent, but those provided by the social environment in which she finds herself (Lewis and Runde, 2002, p. 209; Dold and Petersen, 2020). While the social structures do not determine individual preferences, individuals draw their beliefs and values to a large degree from their environment.[27] For instance, people do not necessarily value a specific job out of an act of explicit individual choice, but because that job is viewed as respectable in their community. This 'preference learning' happens for at least two reasons (Bowles, 1998, 77 ff.). One is that the social system defines the type of preferences that are rewarded (e.g. with material success or a high social status). Another is that it shapes the variety of (other people's) preferences to which an individual is exposed. Through non-rational processes of empathy, identification, and internalisation, the development of people's preferences is shaped by the social

[27] This was a central insight of Buchanan's teacher, Frank H. Knight (1923, p. 585), who emphasised that '[e]conomic activity is at the same time a means of want-satisfaction, an agency for want- and character-formation, a field of creative self-expression, and a competitive sport. While men are "playing the game" of business, they are also molding their own and other personalities' (1923, p. 587).

environment in which they live (Etzioni, [1985] 1999, p. 56). Similarly, many institutions that individuals did not necessarily choose themselves (e.g. family, community, social norms, religion) pre-define the set of evaluative standards used in moments of constitutional choice, thereby influencing the outcome of individual processes of self-constitution.[28] In this way, the social context in which people are situated influences the kind of person an individual wants to become, shaping her imagination about her future preferences and choice options.

The transformational model also makes it possible systematically to incorporate into the analysis the idea that existing social structures influence the development of *cognitive capacities* to transcend the values of the current social structure and creatively imagine rules for actions. The usual public choice logic focuses on rules as solutions to the unconstrained and wayward choices driven by lower-level preferences. Taking the constitutional moment seriously shifts the focus of analysis to the question of how those rules (as part of a wider social structure) provide individuals with the resources and capabilities required to make creative choices about the kind of person they would like to become. Certain sets of social relationships encourage reflective reasoning and the capacity to make constitutional choices, whereas others do not. Agency-friendly institutions 'would seem naturally to be concerned with the conditions (e.g., the educational system, the media, the family, vibrancy of the arts world) that support reflection on what preferences to hold' (Hargreaves Heap, 2013, p. 996). In general, a society which allows for 'experiments of living' (Mill, 1989) and 'public reasoning' about moral and social values (Knight, 1923) might help to ensure that individuals are able to develop a critical distance towards existing values and norms.[29] By exposing themselves to a wide a range of lifestyles and moral opinions, individuals become aware of unexamined convictions, which can in turn spur conscious reflection and active choice of their evaluative standards. In other words, it makes them take up a more general point of view when forming their own characters.

7. Conclusions

Buchanan attributes the inability of orthodox economists to understand constitutional choice to their neglect of ontology. He argues that standard theory is committed to methods that are ill-suited to those aspects of human nature that are central to people's decisions about the kinds of rules that will govern their (inter)actions (cf. Lawson, 1997, 2015). If economics is to be successfully applied in the realm of private and public constitutional choice, Buchanan thinks that it must do justice to the way that people are genuine agents whose choices are not a deterministic response to their circumstances and who as a result are able to shape their own preferences. This may come as a surprise to those who think of Buchanan not as a heterodox economist, but as someone who simply applied standard

[28] Brennan and Brooks (2013, p. 60) point out that the individual capability and willingness to exercise constitutional choice 'will be taken on the lesson that can be taught. The nature of the institutions that best gives expression to that predisposition and the processes by which such institutions are appropriately selected may be issues of intellectual persuasion and "reasoned speculation". But it is not obvious that the underlying ethical impulse is appropriately modelled as an exercise in broadly rational choice. That impulse seems better thought of as given to us by evolution and history'.

[29] According to Knight (1923, p. 584), individuals should discuss different value standards in the public arena. Knight argues that '[it] is surely one function of ethical discussion to keep the world reminded that this [i.e., the existing system of wants] is not the only possible conception of value' (1923, p. 587) and 'to establish bases for comparison with any other possible system' (1923, p. 623).

rational choice theory economics to non-market phenomena. We have sought to show that to view him in this way is both to fail to do justice to the richness of his methodological reflections and also to downplay some of the tensions in his work.

As we have seen, there are places in Buchanan's work on constitutional choice where he departs on ontological grounds from the orthodox model of people as passive atoms who respond mechanically to their circumstances in favour of viewing people as artifactual beings who can choose preferences that will enable them to realise their preferred vision of their future identity. However, we have also argued that there exists a significant tension between this vision of people as dynamic agents and the analytical apparatus through which Buchanan seeks to develop it. Because the latter is assumed to involve rational decision-making on the basis of relatively stable meta-preferences, it reintroduces the very ontological assumption—of a utility function that exists independently of people's actions—that Buchanan had rejected.

In emphasising individuals' ability to construct their identities deliberately and autonomously, Buchanan adopts a voluntaristic approach that does not acknowledge a category of ontologically irreducible social structure. Lacking the conceptual framework required to capture how social structure affects agency, Buchanan has little option but to fall back on orthodox choice theory. Had he developed a more robust concept of social structure, he could have engaged instead in the comparative study of how different institutional regimes cultivate or dull people's capacity to make constitutional decisions. In this way, the transformational model makes it possible to conceptualise the interplay between agency and structure in a way that does justice not only to the dynamic, open-ended nature of human choice but also to the role of social structures and institutions in shaping those choices.[30]

Considering Buchanan's wider political economy project, he (1979 [1999] 1999, p. 252) argues that people have to develop their own character first, before they are able to shape the rules of the social and political game.[31] We have shown that in his approach, the formation of an individual's character involves a purposeful and self-determined act, in which (s)he invests resources deliberately in becoming the person he/she wants to become. We have argued that this assumption rests on shaky ontological grounds (viz., the existence of meta-preferences) and neglects a discussion of how social structures can facilitate or impede individuals' efforts to engage in this kind of character formation. What this suggests is that, in addition to considering how human agency affects social and institutional structures, as Buchanan strives to do through his model of constitutional choice, it is also important to examine how those choices, and the human agents that make them, are shaped by the social context in which they are situated.[32] An analysis of the recursive relationship between social structure and individual

[30] A referee suggested that Buchanan's failure to do justice to the recursive relationship between structure and agency may have contributed to his inability fully to acknowledge the possibility that mutually beneficial institutional arrangements might arise spontaneously, through complex, adaptive relationships between people's preferences and their social context.

[31] 'If man can envisage himself as a product of his own making, as embodying prospects for changing himself into one of the imagined possibilities that he might be, it becomes relatively easy for him to envisage changing the basic rules of social order in the direction of imagined good societies' (Buchanan, [1979] 1999, p. 258).

[32] Buchanan's student, Richard Wagner (2010, p. 44), nicely summarises this point: 'To the extent the substantive habits of heart and mind are modified through the forms of institutionalised practice that are countenanced within a particular society, it is plausible that there would result some feedback from policy to character, in contrast to the customary direction that runs from character or preference to policy'. For more on the notion of 'habits', on how they are acquired and activated and on how they relate to social rules, see Fleetwood (2019a, 2019b).

agency can help analyse how institutions shape the 'habits of heart and mind' that are necessary for people to engage in processes of self-constitution which, in turn, enable them to 'envisage changing the basic rules of social order in the direction of imagined good societies' (1979 [1999] 1999, p. 258).

Bibliography

Aligica, P., Lewis, P. and Storr, V. 2017. Austrian economics and the Bloomington School: an introduction and overview, in Aligica, P., Lewis, P. and Storr, V. (eds), *The Austrian and Bloomington Schools of Political Economy: Advances in Austrian Economics*, vol. 22, Bingley, Emerald, pp. ix–xxi

Brennan, G. and Brooks, M. 2013. Buchanan on freedom, in Lee, D. R. (ed.), *Public Choice, Past and Present*, New York, Springer, pp. 34–64

Brennan, G. and Buchanan, J. M. 1985. *The Reason of Rules: Constitutional Political Economy*, Cambridge, Cambridge University Press

Buchanan, J. [1964] 1999. What Should Economists do? In Buchanan, J., *The Collected Works of James M. Buchanan, Volume 1: The Logical Foundations of Constitutional Liberty,* Indianapolis, Liberty Fund, pp. 28–42

Buchanan, J. M. [1969] 1979. Is economics the science of choice? In Buchanan, J. (ed.), *What Should Economists Do?* Indianapolis, Liberty Fund, pp. 39–63

Buchanan, J. M. [1969] 1999. *Cost and Choice: An Inquiry in Economic Theory, Volume 6 of the Collected Works of James M. Buchanan,* Indianapolis: Liberty Fund

Buchanan, J. M. [1976] 1979. General implications of subjectivism in economics, in Buchanan, J., *What Should Economists Do?* Indianapolis, Liberty Fund, pp. 81–91

Buchanan, J. M. [1979] 1999. Natural and artifactual man? In Buchanan, J., *The Collected Works of James M. Buchanan, Volume 1: The Logical Foundations of Constitutional Liberty*, Indianapolis, Liberty Fund, pp. 246–59

Buchanan, J. M. 1979. Politics without romance: a sketch of positive public choice theory and its normative implications, *IHS Journal, Zeitschrift des Instituts für Höhere Studien*, vol. 3, 1–11

Buchanan, J. M. 1982. The domain of subjective economics: between predictive science and moral philosophy, in Kirzner, I. (ed.), *Method, Process, and Austrian Economics: Essays in Honour of Ludwig von Mises*, Lexington, Lexington Books, pp. 7–20

Buchanan, J. M. [1982] 1999. Order defined in the process of its emergence, in Buchanan, J., *The Collected Works of James M. Buchanan, Volume 1: The Logical Foundations of Constitutional Liberty*, Indianapolis, Liberty Fund, pp. 244–45

Buchanan, J. M. 1987. The constitution of economic policy, *The American Economic Review*, vol. 77, 243–50

Buchanan, J. M. [1989] 1994. Shackle and a lecture in Pittsburgh, in Boettke, P. and Prychitko, D. (eds), *The Market Process: Essays in Contemporary Austrian Economics*, Cheltenham, Edward Elgar, pp. 131–34

Buchanan, J. M. [1989] 1999. The relatively absolute absolutes, in Buchanan, J., *The Collected Works of James M. Buchanan, Volume 1: The Logical Foundations of Constitutional Liberty*, Indianapolis, Liberty Fund, pp. 442–54

Buchanan, J. M. 1990. The domain of constitutional economics, *Constitutional Political Economy*, vol. 1, 1–18

Buchanan, J. [1991] 1999. The foundations for normative individualism, in Buchanan, J. M., *The Logical Foundations of Constitutional Liberty, Volume 1 of the Collected Works of James M. Buchanan*, Indianapolis: Liberty Fund, pp. 281–91

Buchanan, J. M. 2005. *Why I, too, Am Not a Conservative: The Normative Vision of Classical Liberalism*, Cheltenham, Edward Elgar

Buchanan, J. M. and Vanberg V. 1991. The market as a creative process, *Economics and Philosophy*, vol. 7, 167–86

Buchanan, J. M. and Vanberg, V. 2002. Constitutional implications of radical subjectivism, *The Review of Austrian Economics*, vol. 15, 121–29

Davidson, P. 1996. Economic theory and reality, *Journal of Post Keynesian Economics*, vol. 18, 479–508

Davis, J. 2011. *Individuals and Identity in Economics,* Cambridge, Cambridge University Press
Dold, M. F. 2018a. Back to Buchanan? Explorations of welfare and subjectivism in behavioral economics, *Journal of Economic Methodology*, vol. 25, no. 2, 160–78
Dold, M. F. 2018b. A Smithian critique of James M. Buchanan's constitutional contractarianism, in Boudreaux, D., Coyne, C. and Herzberg, B. (eds), *Interdisciplinary Studies of the Market Order: The Political Process and Political Order*, New York, Rowman and Littlefield International Ltd, pp. 17–40
Dold, M. F. and Petersen, M. 2020. Stability of the liberal order, moral learning, and constitutional choice: an unresolved tension in Buchanan's political economy, available at SSRN: https://ssrn.com/abstract=3580391
Dold, M. and Rizzo, M. Forthcoming. Old Chicago against static welfare economics, *Journal of Legal Studies*
Dunn, S. 2004. Transforming post Keynesian economics: critical realism and the post Keynesian project, in Lewis, P. (ed.), *Transforming Economics: Perspectives on the Critical Realist Project,* London and New York, Routledge, pp. 33–54
Etzioni, A. [1985] 1999. Opening the preferences: a socio-economic research agenda, in Etzioni, A. (ed.), *Essays in Socio-Economics,* Berlin and Heidelberg, Springer, pp. 43–61
Fleetwood, S. 2019a. A definition of habit for socio-economics, *Review of Social Economy*, doi:10.1080/00346764.2019.1630668
Fleetwood, S. 2019b. Re-visiting rules and norms, *Review of Social Economy*, doi:10.1080/00346764.2019.1623909
Frankfurt, H. G. 1971. Freedom of the will and the concept of a person, *Journal of Philosophy*, vol. 68, 5–20
Gaus, G. 2018. It can't be rational choice all the way down: comprehensive Hobbesianism and the origins of the moral order, in Boettke, J., Storr, V.H. and Stein, S. (eds), *Tensions in the Political Economy Project of James M. Buchanan*, Arlington, VA, Mercatus Center, pp. 117–45
Hargreaves Heap, S. P. 2013. What is the meaning of behavioural economics? *Cambridge Journal of Economics*, vol. 37, 1–16
Hodgson, G. 1988. *Economics and Institutions: A Manifesto for a Modern Institutional Economics,* Cambridge, Polity Press
Knight, F. H. 1922. Ethics and the economic interpretation, *The Quarterly Journal of Economics*, vol. 36, no. 3, 454–81
Knight, F. H. 1923. The ethics of competition, *The Quarterly Journal of Economics*, vol. 37, 579–624
Knight, F. H. [1942] 1982. Fact and value in social science, in F. Knight, *Freedom and Reform: Essays in Economics and Social Philosophy*, Indianapolis, Liberty Fund, pp. 268–92
Lachmann, L. M. 1977. *Capital, Expectations and the Market Process: Essays on the Theory of the Market Economy*, Kansas City, Sheed, Andrews and McMeel, Inc.
Lachmann, L. M. 1986. *The Market as an Economic Process*, Oxford, Basil Blackwell
Lawson, T. 1997. *Economics and reality*, London and New York, Routledge
Lawson, T. 2003. *Reorienting economics*, London and New York, Routledge
Lawson, T. 2015. The nature of heterodox economics, in Pratten, S. (ed.), *Social Ontology and Modern Economics,* London and New York, Routledge, pp. 97–126
Lewis, P. 2000. Realism, causality and the problem of social structure, *Journal for the Theory of Social Behaviour*, vol. 30, 249–67
Lewis, P. (ed.). 2004. *Transforming Economics: Perspectives on the Critical Realist Project,* London and New York, Routledge
Lewis, P. 2005. Boettke, the Austrian school and the reclamation of reality in modern economics, *Review of Austrian Economics*, vol. 18, 83–108
Lewis, P. 2017a. Ontology and the history of economic thought: the case of anti-reductionism in the work of Friedrich Hayek, *Cambridge Journal of Economics*, vol. 41, 1343–65
Lewis, P. 2017b. Shackle on choice, imagination and creativity: Hayekian foundations, *Cambridge Journal of Economics*, vol. 41, 1–24
Lewis, P. and Runde, J. 1999. A critical realist perspective on Paul Davidson's methodological writings on—and rhetorical strategy for—post Keynesian economics, *Journal of Post Keynesian Economics*, vol. 22, 35–56

Lewis, P. and Runde, J. 2002. Intersubjectivity in the socio-economic world: a critical realist perspective, in Fullbrook, E. (ed.), *Intersubjectivity in Economics: Agents and Structures*, London and New York, Routledge, pp. 198–215
Lewis, P. and Runde, J. 2007. Subjectivism, social structures and the possibility of socio-economic order, *Journal of Economic Behavior and Organization*, vol. 62, 167–86
Loewenstein, G. and Prelec, D. 1992. Anomalies in intertemporal choice: evidence and an interpretation, *The Quarterly Journal of Economics*, vol. 107, 573–97
Martins, N. 2006. Capabilities as causal powers, *Cambridge Journal of Economics*, vol. 30, 671–85
Martins, N. 2011. Can neuroscience inform economics? Rationality, emotions, and preference formation, *Cambridge Journal of Economics*, vol. 2, 251–67
Mill, J. S. 1989. *On Liberty and Other Writings*, Cambridge, Cambridge University Press
Mises, L. von. [1949] 1966. *Human Action: A Treatise on Economics*, 3rd ed., revised edition, Chicago, Contemporary Books Inc.
O'Driscoll, G. and Rizzo, M. 2015. *Austrian Economics Re-Examined: The Economics of Time and Ignorance,* London and New York, Routledge
Ostrom, V. [1976] 2012. David Hume as a political analyst, in Allen, B. (ed.), *The Quest to Understand Human Affairs, Volume 2. Essays on Collective, Constitutional, and Epistemic Choice*, Lanham, Lexington Books pp. 3–30
Ostrom, V. 1980. Artisanship and artifact, *Public Administration Review*, vol. 40, 309–17
Rizzo, M. J. 2014. James M. Buchanan: through an Austrian window, *The Review of Austrian Economics*, vol. 27, 135–45
Runde, J. 1993. Paul Davidson and the Austrians: reply to Davidson, *Critical Review*, vol. 7, 381–97
Sen, A. K. 1977. Rational fools: a critique of the behavioral foundations of economic theory, *Philosophy & Public Affairs*, vol. 6, 317–44
Sen, A. K. 1987. *On Ethics and Economics*, Oxford, Basil Blackwell
Sen, A. K. 1997. Maximization and the act of choice, *Econometrica*, vol. 65, 745–79
Sen, A. K. 2002. *Rationality and Freedom*, Cambridge, MA, The Belknap Press of Harvard University Press
Shackle, G. L. S. 1961. *Decision, Order and Time in Human Affairs*, Cambridge, Cambridge University Press
Shackle, G. L. S. [1972] 1992. *Epistemics and Economics,* London, Transactions Publishers
Shackle, G. L. S. 1976. Time and choice, *Proceedings of the British Academy*, vol. 62, 306–29
Shackle, G. L. S. 1979. *Imagination and the Nature of Choice,* Cambridge, Cambridge University Press
Shackle, G. L. S. 1983. The bounds of unknowledge, in Wiseman, J. (ed.), *Beyond Positive Economics,* London, Macmillan, pp. 28–37
Shackle, G. L. S. (1988). *Business, Time, and Thought*. New York: New York University Press
Stigler, G. and G. Becker. 1977. De Gustibus non est Disputandum, *American Economic Review*, vol. 67, 76–90
Sugden, R. 2018a. *The Community of Advantage: A Behavioural Economist's Defence of the Market*, Oxford, Oxford University Press
Sugden, R. 2018b. What should economists do now? in Wagner, R. (ed.), *James M. Buchanan*, Basingstoke, Palgrave Macmillan, pp. 13–37
Swedberg, R. 1990. *Economics and Sociology: Redefining Their Boundaries—Conversations with Economists and Sociologists*, Princeton, Princeton University Press
Veblen, T. 1898. Why is economics not an evolutionary science? *Quarterly Journal of Economics*, vol. 12, 373–97
Wagner, R. E. 2010. *Mind, Society, and Human Action: Time and Knowledge in a Theory of Social-Economy*, London and New York, Routledge
Whitman, D. G. 2004. Meta-preferences and multiple selves, Unpublished manuscript
Wicksteed, P. H. 1910. *The Common Sense of Political Economy*, vol. 1, London, Routledge