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The Making of a Constitutionalist: James Buchanan on Education¹

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Abstract

This article studies the few works James Buchanan wrote on education from the end of the 1950s to the early 1970s. These neglected works tell us important things about how Buchanan's ideas on constitutions evolved through time, because they provided Buchanan with the opportunity to apply his ideas about constitutions and, in return, nurture his theoretical thinking. Two historical developments were of importance in the evolution of Buchanan's thinking: the Southern reactions to the Supreme Court's injunction to desegregate public schools in the late 1950s, and, in the late 1960s, university unrest. We argue that Buchanan moved from a rather optimistic conception that constitutions complement market mechanisms, and constitutional manipulation can be tolerated if market mechanisms were sufficiently important to nonetheless let individuals do what they want, to a really pessimistic view – a constitution is absolutely necessary to control and even coerce behaviors. Behind these claims stands Buchanan's conception of what is a “good society” and of the role of the economist in its defense.

Key-words

James Buchanan, Constitutional economics, Education, University, Liberalism, Warren Court, Brown vs. Board of education

JEL codes: A11, B25, B31, I21, I22, I23

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The 1986 Nobel Prize laureate, James Buchanan, did not write much on education and the little he wrote is hardly visible. The bulk of his articles on that topic were not printed in academic outlets. His only book on this subject, *Academia in Anarchy* (1970) was not issued by academic publishers, nor reprinted – on Buchanan's demand – in his collected works and was dismissed by Buchanan (2007, 115) himself in his biography. No surprise, then, that these works were mostly ignored by historians of economics and by specialists of Buchanan as well. However, do we claim, these works are central in understanding historically how Buchanan's views on constitutions evolved from the late 1950s, when his initial ideas emerged a few years before the seminal *Calculus of Consent*, to the mid-1970s, when his second major opus on constitutions, *The Limits of Liberty*, was published. Indeed, his papers on education provide insights on both his theoretical work and his views on society at a certain point in time. Both aspects were interrelated: these works show us clearly that Buchanan's approach to constitutional problems was always considered as a tool for social and political change. Early-on, Buchanan was interested in promoting and defending his vision of the good society, one in which institutions warranted individual freedom and necessarily emerged out of consensus among people. Buchanan, thus, conceived the political economist as a key player in society, whose role is to inform citizens and attempt to identify those policies that could secure unanimous consent so as to avoid coercion. From the late 1950s to the mid-1970s, education provided Buchanan with a fertile ground to apply his views adopting the stance of the “political economist”. Consequently, his theoretical developments nurtured and were nurtured by these practical applications.

The present essay offers, therefore, a contextualization of Buchanan's thought centered on his works on education, which should complement existing narratives that, so far, have mostly focused on the broad context (the Cold War, essentially, as in Amadae 2003) or on the internal

dynamics of the field (see Boettke and Marciano 2015; Johnson 2005, 2015; Medema 2000).²

We argue that Buchanan's constitutional economics emerged and evolved in reaction to situations for which he felt that important changes in constitutional rules had been decided without the consent of the people. This was problematic for Buchanan, even dangerous: non-consensual changes in the rules of the game posed a serious threat to freedom. Our narrative focuses on two historical developments that were central in this respect. The first event was related to the Southern reactions to the 1954 and 1955 decisions of the Supreme Court to desegregate public schools. The second one was related to the student unrest of the late 1960s and early 1970s. We claim that Buchanan's works on education, written in reaction to these events, document the progressive shift in Buchanan's constitutional economics from a rather optimistic view to a rather pessimistic view about social organization.

During the late 1950s, Buchanan's optimistic views about constitutions and society developed at a time when he contributed to the support of school vouchers in the South. Vouchers were promoted as a tool to provide superior levels of education and, at the same time, offered to circumvent the Supreme Court's injunctions to desegregate schools. In doing so, Buchanan applied his initial ideas that the political economist had an important role to play in the discussion about the rules of the game, which involved a specific vision of the relationship between the market process and collective decisions. The relative success of Buchanan's ideas at the time supported Buchanan's beliefs that the political economist had a role in preserving the "good society". Later though, Buchanan progressively doubted of his framework's ability to cope with the major changes within American society and American

²One exception is David Reisman's book (2015, 152), which addresses Buchanan's analysis the Supreme Court's decision to desegregate public schools, the war in Vietnam, and student protests. Yet, Reisman's account is by no means a contextual history of Buchanan's ideas. He mostly focuses on Buchanan's *a posteriori* comments and reconstructions of past events.

universities, and to provide a consensual solutions to the problems of the day. As he drastically opposed the way administrators and faculties responded to the students protesters at the time, he became persuaded that current rules within academia—and society at large—were inadequate, especially given the rise of what he perceived to be “anti-social” behavior. This induced Buchanan to focus on situations where constitutional change could not be secured unanimously and, consequently, led him progressively to introduce coercion to his constitutional framework.

Section 1 studies the links between Buchanan’s early constitutional thoughts and the defense of school vouchers as the main tool for desegregation in the 1950s Virginia. Section 2 contextualizes Buchanan’s increasing doubts regarding the relevance of his approach. Buchanan’s short stay at UCLA, addressed in section 3, analyzes how he reacted to student violence and began to think about coercion. Section 4 studies the emergence of the “Samaritan Dilemma” in the context of student unrest in the early 1970s. Finally, section 5 offers concluding remarks.

1. Freedom and coercion: the development of Buchanan’s views on market and constitutions in the 1950s

Buchanan was fascinated by the social contract theory of the state very early in his career. The idea was already present in 1947 (in his master thesis), again in 1948 (in his doctoral dissertation) and in 1949 (in the submitted version of his first published article). Although he would not develop his constitutional economics until the late 1950s, his concerns for the relationship between markets and politics were emerging in the mid-1950s. At this early stage already, those considerations were strongly linked to the role that freedom played in Buchanan’s thought, a notion that would also prove central in his work on education in 1959.

In 1954, Buchanan wrote that in a democracy, “[m]en *must* be free to choose” (1954a, 120; emphasis added) – a statement doubly normative that, first, links democracy and free choice

and, second, implies that, for him, freedom is independent from the nature or content of the choice. Buchanan (1954b, 340) indeed defined freedom as: “the absence of coercion and unfreedom as the state of being prevented from utilizing the normally available capacities for action”. In this respect, it was clear to Buchanan (1954b, 341) that, when choosing between what he thought were the two alternative institutions to make choices in a society--the market and voting-- “[t]he market should ... be preferred as a choice process when individual freedom is considered in isolation” because there is “a greater degree of freedom in market choice”. The reasons, he explained, were that not only did the market let individuals make the choices they wanted but it also imposed no result – “there is no way of telling what a market-determined result will be (even if we know the individual orderings) except to wait and see what the market produces” (Buchanan 1954a, 122). By contrast, Buchanan thought that political processes were coercive. Voting imposed specific results. Hence, under the majority rule, each individual faced the risk “of being a member of a dissenting minority” (Buchanan 1954b, 339). To him, only unanimity avoided coercion: Buchanan considered that such a rule transferred into the political realm the characteristics of the market process.

Those considerations about freedom and social organization were not merely theoretical side notes. They were already important to him, as evidenced by the role they started to play when, he and his friend and Chicago economist G. Warren Nutter, established the Thomas Jefferson Center for studies in Political Economy and Social Philosophy at the University of Virginia (UVa) in 1957. Both economists shared a similar dissatisfaction with the current evolution of economics. Because “technique was replacing substance” (Buchanan 2007, 95) and because of the “increasing specialization of knowledge and scholarship” (Buchanan 1958, 5), they were convinced that their discipline was shifting “away from its classical foundations as a component element in a comprehensive moral philosophy” (Buchanan 2007, 95). But those methodological considerations were intertwined with a willingness to defend a certain

view of society in which freedom would play a central role. As Buchanan (1958, 5) explained in the presentation of the Center, published in the University's *News Letter* in October 1958, he and Nutter wished to go back to and "carry on the honorable tradition of '*political economy*' - the study of what makes for a 'good society'". By that, Buchanan (1958, 5) essentially meant "free society". It was, he argued, the expansion of individual freedom, not its contraction, that had caused the "accelerating improvement in material standards of wellbeing previously undreamed of". In this respect, the Jefferson Center was created to gather "a community of scholars who *wish* to preserve a social order based on individual liberty" (1958, 5, emphasis added). In other words, Buchanan considered individual freedom as an imperative for research in political economy.

Interestingly, the *raison d'être* of the Jefferson Center, as put forward by Buchanan (1958), was precisely related to the threats to individual freedom that were posed by what he considered to be constitutional changes. The very institutions "vital to the preservation of individual liberty", he explained, were being undermined by decisions that allowed these "to be divorced bit by bit from their original intent and purpose in the social structure" because policy makers, accused of paying "an overly-close attention to current minor irritations in the social fabric" allowed the "institutions to be modified out of all recognition" (6). This left a very specific role for the political economist to play, as Buchanan explained in this presentation and in a subsequent paper, "Positive Economics, Welfare Economics, and Political Economy" (1959), also completed by October 1958 (Buchanan to Clarence Philbrook, 21 October 1958, BA). Not only did the role of the political economist consist in stimulating "open and lively discussion of how a *free* society *should* be organized and preserved" (1958, 5; emphasis added). The scope of his analysis consisted primarily in policy changes which had an impact on the law: "Political economy", Buchanan (1959, 133n) wrote, "is concerned exclusively with modifications of the rules of the game".

In this respect, Buchanan (1959, 137) insisted that the political economist had to stick to a scientific, non-normative or “positive” role, which, in Buchanan’s mind, meant that the political economist “is, or should be, ethically neutral”. The positive political economist’s role, was, therefore, “that of diagnosing social situations and presenting to the choosing individuals a set of possible changes” – what he called “formulating and testing hypotheses” (127). Therefore, the political economist’s work was “positive” because it was impossible for him to know in advance what policy would lead to a Pareto improvement. Buchanan refused to impose any *a-priori* criterion of optimality, which he considered as a value judgment. Only the unanimous consent of citizens on a particular policy would reveal their true preferences and establish if the proposed changes would be Pareto optimal. This process, moreover, ensured that freedom prevailed, because unanimity implied no coercion.³

In Buchanan’s (1957, 454) thought, this did not mean that the political economist should be “detached from the passing game”, as he had underlined in a 1957 review of Dennis Robertson's *Economic Commentaries*. Quite the contrary: the political economist was more than a mere scientist and “it is an extremely narrow view which holds that the economist should play no other role”. As testified by the way unanimity and freedom shaped the role of the political economist, as well as by the creation of the Jefferson Center as the “institutional embodiment” of this approach, the economist had a say in “what makes for a good society” (Buchanan 1958, 5). In addition, Buchanan (1959, 138) also considered that in complex cases for which unanimous consent would be practically impossible to test, “the economist may, if he desires, discard his ‘scientific cloak’ and ‘introduce his own ethical evaluations and state openly and frankly’ what he thinks ‘would be ‘good’ for the whole group.’”

This peculiar approach, which started from the normative goal of preserving freedom

³Political economy, to Buchanan (1959, 132), “applies to only one form of social change, namely, that which is deliberately chosen by the members of the social group”.

against coercion in order to build an analysis where the economists should not attempt to introduce his value judgments, did find a practical application at about the same period.⁴ In February 1959, Buchanan and Nutter published a paper about education hoping to bring elements to an important problem at the time: school desegregation.

This episode provided an interesting application of Buchanan's ideas and early constitutional thinking. Indeed, the debate to which Buchanan and Nutter's piece contributed originated in major constitutional decisions that profoundly changed Southern social coordination. Under the leadership of Chief Justice Earl Warren, the US Supreme Court had ruled segregation in the public school system unconstitutional in 1954 (*Brown I*) and, in 1955, delegated the task of carrying out desegregation to district courts with orders that it occurred "with all deliberate speed" (*Brown II*).

This major social change through a legal decision was not unanimously welcomed throughout America.⁵ In the South, the reaction was also mixed, ranging from unconditional support of the decision, notably by the National Association for the Advancement of Colored People, to a movement of "massive resistance" organized until 1958 by the staunchest supporters of segregation. In Virginia, "massive resistance" took the form of Student Placement Boards, controlled by the state, to prevent black pupils to attend white schools for allegedly pedagogical reasons. In some cases, when Federal courts had to enforce desegregation rulings, the state removed financial aid to local school districts, or simply

⁴For a thorough analysis of Buchanan's peculiar views of "positive" and "normative" analysis, see Udehn (1996, 174-188).

⁵The first Gallup Poll organized immediately after *Brown v. Board* showed that 55% Americans supported the decision while 40% disapproved of it. Between 1956 and 1961, the percentages were only slightly higher in favor of the decision: six Americans out of ten declared to support the decision (Friedman 2002, 186n).

decided to shut the schools down. It was the case in September 1958, when the recently elected governor James Almond decided to close nine public schools, starting a school crisis leaving 13,000 students out of school.⁶ It lasted until January 1959 when the Virginia Supreme Court and an Eastern district court of Virginia (Norfolk Division) overturned Almond's decision (Lassiter and Lewis 1998, 46; Ryan 2010, 41-44).⁷ Massive resistance then lost most of its support from white middle-class families. According to Lassiter and Lewis (1998, 3), even those who opposed forced integration felt that massive resistance was, ultimately, threatening the public school system they wished to preserve.

By February 1959, as Buchanan and Nutter (1959, 1) noted, the “school crisis” was “legally resolved”. But tensions remained strong regarding school desegregation. An idea to ease those tensions was gaining currency at the time: it consisted in giving racially-neutral tuition grants to parents who wanted to choose private schools instead of public ones (Lewis 1998, 78; Hershman 1998, 127-133). It was, in particular, defended by a former managing editor of the *Richmond Times Dispatch*, Leon Dure, who had been promoting those views at least since 1958.⁸ An ardent defender of individual freedom, Dure argued that freedom of

⁶In Warren County (Sept. 11), Charlottesville (Sept. 16) and Norfolk (Sept. 27).

⁷Respectively, because the school closing law violated Section 129 of the Virginia constitution, which required the state to “maintain an efficient system of public free schools throughout the State”, and because the school closing statute violated the 14th Amendment to the U.S. Constitution.

⁸Dure’s proposals included student placement strategies and school vouchers. School vouchers had already been proposed in Virginia in 1956 under the report of the “Gray Commission”, promoted by massive resisters. Yet the plan was narrower than what Dure’s late 1950s pamphlets advocated, in that they were only given to white families willing to send their children in segregated private schools.

choice came with the “freedom of association” and, conversely, the freedom not to associate with some individuals (see Hershman 1998, 130; see also Dure 1962). Allowing families to choose freely the schools they wanted their children to go to was a means to maintain segregation “in spite of the Supreme Court decision” because “most white people do not want Negro association” (Carl 2011, 91 and 216n). This explains that scholars working on the history of desegregation have associated Dure with massive resisters, such as James Kilpatrick (e.g. Hershman 1998, Webb 2005, Carl 2011). Yet, the “freedom of choice” motto, which squared with the deepest American values of freedom while offering to preserve segregation on a voluntary basis, appealed not only to Kilpatrick and some massive resisters, but, more importantly, to white middle-class families, as well as political moderates such as Colgate Darden, then President of UVa (Huswit 2013, Hershman 1998, 128).

Buchanan and Nutter’s pamphlet, “The Economics of Universal Education”, published in the newspaper *Richmond News Leader* in February 1959, proposed to bring additional support to the school vouchers program. A non-technical and popularization piece, the paper stood as a concrete application of Buchanan’s stance as political economist, because the authors hoped to provide a value-neutral economic analysis of different competing ways to reach a goal that the authors felt was unanimously agreed-upon: providing and financing schooling for every child. They did not explore in depth concrete systems – for instance, Dure’s school vouchers program for Virginia was only mentioned – or made empirical claims. Rather, they studied two ideal-types: a system characterized by state-run schools and zero tuition, and one where the schools would be privately operated, but where the costs of tuition would be subsidized by a State grant. In this latter situation, the authors argued that vouchers would allow students to choose freely the school they would like to attend, allowing for an increase in competition between institutions and eventually an increase in the quality of education at minimum cost. Thus, education provided by private institutions and sponsored by vouchers would meet the

perceived requirements of public education, for instance compulsory attendance or responsibility of private institutions to the citizen and, they insisted, would certainly cost less than the traditional state-run system.

In other words, what they viewed as good for the society was a system of vouchers (a private system) in which individuals could be free to choose the school they wanted. But Buchanan and Nutter were careful to distinguish those arguments from ethical ones regarding racial segregation. Indeed, they chose not to analyze the racial aspects of the problem. Moreover, they were careful to state explicitly their own “ethical” views of the situation. Almost paraphrasing Dure, Buchanan and Nutter (1959, 1) wrote: “every individual should be free to associate with persons of his own choosing. We therefore disapprove of both involuntary (or coercive) segregation and involuntary integration”. Then, they warned their readers that they would leave aside the “fundamental ethical questions involved in the school crisis” (1), because their “ethical views have nothing to do with the economic issues we propose to discuss” (1) and that their “academic or professional status” did not bestow “special authority or competence to speak on these issues” (1).⁹

This was consistent with Buchanan’s views of the role played by the political economist in society, as described above. He could “discard his scientific cloak” and state what he felt was better for the whole group. But once this normative opinion was exposed, Buchanan believed that it was possible to conduct an economic analysis devoid of value judgments in order to

⁹On February 27, they sent their paper to Morris M. Caplin (then professor at the UVa School of Law) and Ralph W. Cherry (dean of the School of Education of UVa). In the enclosed letter, they insisted that their approach was that of “professional economists” and not of “citizens”. Their goal was not to “take a public position on the fundamental issues in the school crisis” but to make “a simple and straightforward analysis of the economic issues in the case”.

expose to citizens the economic implications of such and such decisions. In this case, Buchanan's beliefs in individual freedom of association were complemented by technical arguments about efficiency and costs of private schooling. Buchanan and Nutter were convinced that developing private education through vouchers was the right thing to do because, ultimately, such a solution would lead to a final outcome that would approximate unanimous consent and minimize coercion. Although the reasons for their concerns "over the serious constitutional questions raised by recent politics of the federal and judicial branches" were rather imprecise in this paper, it is clear that, from the "freedom of choice" perspective they supported, the Supreme Court's decision was not unanimously welcomed (1959, 1-2; see also Dure 1962).¹⁰

Buchanan and Nutter's defense of vouchers was not simply another contribution on the superiority of vouchers and market competition, following the ones of Milton Friedman (1955) and Procter Thomson (1955).¹¹ It was tied to Buchanan's early constitutional thinking for which political economy only dealt with social change unanimously decided upon by individual. It was also directly related to his and Nutter's vision of the "good society" and of the role that individual freedom played in it. Here, the market was the preferred process to reach collective outcomes as it forced no-one to suffer from the choice of others. In a world in which the rules of the game may be changed, markets were not only means by which resources were properly allocated. Markets were thought of as institutional means allowing

¹⁰Later, Buchanan (1974, 492) explained that non extra-legal criterion for judicial decision was not "acceptable", extra-legal meaning "derived... independently of the effective constitutional rules in being". This is where "[t]he tragedy of Earl Warren's court" lay: "in its avowal of a role for the judiciary that is wholly inconsistent with the structure of constitutional democracy" (Buchanan 1975a, 904).

¹¹Thomson was among the first visiting scholars of the Jefferson Center in 1957.

individuals to pursue freely their objectives and, conversely, protecting them against the coercive, non-unanimous, decisions of the Courts.¹²

Moreover, and in spite of Buchanan and Nutter's careful distinction between their opinions *qua* scientists and *qua* citizens, those arguments contributed to build the case for the "freedom of association" stance. First, their article was published in 1959 in the *Richmond News Leader*, and later (1964) reprinted and complemented with additional material brought by Dure himself (see below, section 2). At the time, the *News Leader* was a newspaper with a segregationist stance and was edited by Kilpatrick. Although there is no evidence that Buchanan and Nutter shared these views, they shared ties with Kilpatrick.¹³ In 1959, "freedom of choice" was enacted by the General Assembly as the main instrument for desegregation in Virginia, putting an end to "massive resistance". Tuition grants – three million dollars were allocated for the 1959-1960 school years – would be offered to families who wanted their children to attend private non-sectarian schools. The decision followed the legislative

¹² This was precisely what was restated by the U.S. District Court for the Eastern District of Virginia in *Cochyese Griffin v. State Board of Education* in 1964: the absence of private schools for African Americans is not "a fault of the law; it's an economic, not a constitutional, obstruction" (in Buchanan and Nutter 1964, 72-73).

¹³ In December 1958, Nutter wrote to Kilpatrick asking him to scrutinize Justice Earl Warren's personal record on racial discrimination, especially "his role on the internment of Japanese Americans during World War II (Nutter to Kilpatrick, December 16, 1958. Kilpatrick's papers). The relationship was carried on in the 1960s. For instance, Buchanan sent Kilpatrick a copy of Tullock's manuscript "The Politics of Bureaucracy", hoping that Kilpatrick would "see fit to give some considerable space to the book in the News Leader", suggesting further that the outlet was considered as a potential device for disseminating the message of the Jefferson Center (Buchanan to Kilpatrick, 8 January 1965, Kilpatrick papers).

recommendations of the Perrow Commission, appointed by Governor Lindsay Almond. Buchanan and Nutter's article was distributed to most members of the Commission while Dure was one of the main speakers in some of its hearings.¹⁴

A few months before he or Tullock began to work on early drafts of *The Calculus of Consent*, therefore, Buchanan had already developed important intuitions regarding the role of freedom, constitutions and unanimous consent. Buchanan and Tullock's approach to constitutional economics, notably, rests on the idea that markets and collective (or political) choices are two alternative ways to lead a society to certain collective outcomes. The crux of constitutional design is, therefore, to decide on the proper division of labor between the two processes. But the starting point of the analysis rested on Buchanan's normative views that the ideal constitution should preserve individual freedom, thus, be negotiated and decided upon unanimously. By 1962, vouchers were enacted in many other states than Virginia: Buchanan was somewhat assured that his political economy found practical applications and suggest consensual changes. Vouchers appeared as a powerful way to organize an important social change through the market, instead of through collective (and, to them, coercive) choice, in such a way as to approach unanimous consent. Indeed, vouchers proved for some years to be relatively consensual in Virginia and other Southern states, in the sense that it gathered the support of white middle-class families and political moderates (Hershman 1998).

2. Conflicting views about what rules Academia

After *The Calculus of Consent*, the next work directly tackling the notion of constitutions appeared in a 1968 paper for *Social Research*. Written in a context of crisis, like the 1959

¹⁴The Commission's proposals were politically moderate, in that they opposed massive resisters' will to defy the federal government and the Supreme Court. But the report of the Commission is proposing legislative reforms explicitly designed to avoid forced integration after having exhausted every legal means possible against the Supreme Court's decisions.

paper with Nutter, the piece dealt with student unrest, and provided yet another occasion to apply his ideas as act as a “political economist”. This time, though, the context had significantly changed. Not only were the students disrupting the on-going process of many important American universities throughout the 1960s, but Buchanan would personally experience the rapid erosion to his autonomy at UVa. Understood in the light of those developments, the 1968 paper shows Buchanan’s rising doubts about the ability of his constitutional approach to propose workable solutions.

Back in the late 1950s, as Buchanan (2007, 94) will later recall, he and Nutter had benefited from the “enthusiastic support” of William Duren, then dean of the faculty of economics, when they had created the Jefferson Center. This had resulted in institutional independence and freedom of research: Buchanan and Nutter had invited the scholars they wished to invite and had hired, in the economics department at UVa, those they wanted to hire.¹⁵ Their independence was reinforced by the large five-year grant they obtained from nonacademic sources – in that case, the William Volker Fund (Buchanan 2007, 95, Medema 2000). The autonomy that Buchanan (1969a, 25) enjoyed at the time led him to rationalize, a few years later, that academia was basically structured along the lines of his ideal constitutional standards: “The whole university-college-tradition, the community-of-scholar notion embodies an institutional arrangement in which individuals are expected to adhere to behavioral standards... characterized by mutual self-respect and tolerance... that are voluntarily maintained and changed only by mutually acceptable adjustment processes”. Buchanan’s view changed during the 1960s, though. Firstly, because of the behavior of

¹⁵Frank H. Knight was the "inaugural visiting scholar at the Center" (Buchanan, 1958, 7) in 1957. Then, Peter T. Bauer, Roland McKean (in 1957), Ronald Coase (in 1958), Overton H. Taylor and Maurice Allais (in 1959) were also invited. Leland Yeager was hired in 1957 and Coase in 1959.

students, who increasingly challenged the on-going organization of the university. The situation in California, to which Buchanan refers in the 1968 paper, provides a telling illustration of those developments. Berkeley, notably, had become leading place for students' protests in the western half of the United States. There, the student movement had initially emerged during the "Free Speech Movement" of 1964. The debates then bore on the right to use the university's facilities to organize the students' off-campus political activities. Denying them this right meant "being denied the very possibility of 'being a student'", as Mario Savio (1965), the spokesman of the movement, put it. To him, students were reduced to "pseudo students" whose role was to "further the interests of those who own the University, those vast corporations in whose interest the University is managed" (Savio 1965).

The movement attacked, notably, the visions developed by the President of the University of California, Clark Kerr. Kerr's widely influential *Uses of the University* had offered a liberal blueprint for the administration of a university. Being influenced by pluralistic political theory, Kerr envisioned a mediating role for the President of the university, who should arbitrate between the many diverse interests of students, administrators, faculty, and external stakeholders (see Loss 2012). To the protesters, Kerr's vision of a university engaged in the contemporary society prevented the conduct of free and autonomous research, especially when research had to be politically engaged. In particular, threats to academic freedom and free speech came from those stakeholders outside the university: they came from the military-industrial complex, for instance the research contracts passed with the U.S. army and other private companies that supplied them (Mata 2010).

This desire for political engagement led also the protesters to call for teaching and research dealing with more "relevant" topics. The university, they believed, should to engage directly with the social problems of the day – "war, imperialism, gender discrimination, and racism" (Mata 2010, 91). At UCLA and other universities from 1967-on, minority leaders increasingly

pressured administrators and faculty members to develop courses related to black history, black literature, inner-city life, to hire additional black faculty to teach them specifically, and required that more blacks and other minority students be recruited (Collisson 2008).¹⁶

Those developments posed a serious challenge to the peaceful order and the mutually acceptable adjustments that described academia in Buchanan's recollections. Student unrest in America was peaking in the late 1960s and a number of administrators seemed to be overwhelmed. In many universities, profound organizational changes were happening to meet the protesters' demands, but these, ultimately, thoroughly divided the community of scholars.¹⁷ Although some of them supported the student movement, most academics, conservatives and liberals alike, condemned the violence and warned about the dangers that the university becomes the echo chamber of radicals (e.g. Jewett 2012, 561-2). Moreover, the trend seemed international: Buchanan's friend, economist Francesco Forte, described to Buchanan the "rather peculiar" situation at the University of Turin in frightening terms: "bombs have become usual now", he explained, while confessing that "the authorities of the University... now have lost the control" (Forte to Buchanan, 31 March 1968, BA).

Buchanan also personally experienced the erosion of his scholarly freedom and, more generally, his views about the peaceful and orderly process of academia. This time, though,

¹⁶□ This was not specific to UCLA. At Berkeley, for instance, students had formed a Center for Participant Education and had proposed courses on these topics (Taylor 1998). And the Academic Senate division of Berkeley had created a Board of Education Development to discuss students' proposal.

¹⁷□ In his contribution to the *Deadalus* volume on "The Embattled University", Richard Hoffman (1970, 179) wrote: "The university is the place where some of the most important contradictions and tensions of modern society are at their most concentrated and explosive... Being the arena of greatest strain, the university becomes the stake of the deepest divisions."

the threats came from colleagues rather than students. The rejection by the Ford Foundation, in 1961, of an application from the Jefferson Center asking for more than a million dollars to launch a long range educational program, set the stage. The reasons given by the Ford officials were an identified lack of methodological and political balance that did not fit into the Foundation's program to support unbiased endeavors (Medema 2009, Levy and Peart 2013). In particular, Buchanan's commitment to liberty was found "particularly objectionable" (Levy and Peart, 2013, 15). Buchanan interpreted the rejection of the application as being politically driven, as a value judgment that neglected the evaluation provided by the marketplace of ideas. Buchanan (1962, 2) could hardly understand the decisions since, as he stated in a memorandum for the Long Range Planning Committee of UVa, the department of economics and the Jefferson Center were "successful" when "measured in terms of graduate students", academic publications, and by the reputation within the profession. For other economists, "a 'Virginia' economics department is becoming a reality", he wrote (2). And this had been possible only thanks to the autonomy of the Center and the department of economics.

In 1963, similar arguments were leveled against the Center, but, this time, they came from within UVa. Its new president, Edgar Shannon, and dean of the faculty of the College of Arts and Sciences Robert Harris, were increasingly concerned about the reputation of the Center, up to the point that Harris commissioned a committee to think about "ways of changing... the 'political orientation' of the Department of Economics" (Medema 2009, 145). Again, the conclusion underlined that the department was too supportive of a "particular viewpoint... described by its friends as 'Neo-Liberalism' and its critics as 'Nineteenth-Century Ultra-Conservatism'" (Peart and Levy 2013, 63). Progressively, thus, Buchanan's strategy of specialization in "political economy", was being called into question. The administration, subsequently, pressured for more diversity in the political and methodological views among

the members of the Center, by refusing to hire economists associated with the University of Chicago, to promote Tullock, or to counter offers made by other universities to Ronald Coase or Andrew Whinston.¹⁸

But in a context where “freedom of choice” also meant the defense of *de facto* segregation in schools, it is understandable that members of the Center were also regularly associated with extreme conservatism by more progressive-minded scholars such as Shannon or Harris.¹⁹ As the 1960s unfolded, the Center’s position to support school vouchers ran increasingly against the tide. In 1964, the Center published a “Report on the Virginia Plan for Universal Education”, which reprinted Buchanan and Nutter’s 1959 paper complemented with a statistical analysis of the vouchers plans using data gathered by the “freedom of choice” architect himself, Dure. Albeit careful in its conclusion that vouchers promoted cost-effective

¹⁸Coase, Tullock, and Whinston would eventually leave UVa.

¹⁹Ronald Coase recalled that his “wife was at a cocktail party and heard [him] described as someone to the right of the John Birch Society.”

(<http://reason.com/blog/2013/09/04/economist-ronald-coase-was-chased-out-of>) while

William Breit (1987, 8) recalled being asked, after his recruitment in 1965, if he was a fascist.

In “We Must Dare to Be Different” (1962), Buchanan had argued that the UVa should not attempt to mimic what was done in other universities, but, instead, should specialize by embracing wholeheartedly the Southern values, seen as a source of strength instead of embarrassment. The specialization would promote programs that would “not be appropriate in the more ‘progressive’ states”, but which would, nonetheless attract cohorts of local students (3). Buchanan did not say what exactly would not be appropriate for more progressive states, but it may have comforted his opponents in their association of the Center with a conservative line. Tullock’s public support of Barry Goldwater’s campaign may have contributed to this feeling as well.

education, the defense of vouchers contrasted with the growing attacks found for instance, in the 1965 report of the US Commission on Civil Rights, and, eventually, in the many decisions by district courts that, starting in 1967 in Louisiana and Alabama, ruled the freedom of choice plans illegal.²⁰

By 1968, the daily routine of American scholarly life was being forcefully shaken by student protests. Meanwhile, Buchanan's autonomy within UVa as well as his positions as a political economist on the concrete case of school vouchers were called into question. These three aspects permeated Buchanan's "Student Revolts, Academic Liberalism, and Constitutional Attitudes", which he wrote at the request of Peter Berger, then editor of *Social Research*, who wanted to publish a special issue about "Conservatism in Social Science". Written during the first months of 1968, when Buchanan already knew he would leave UVa to UCLA, the paper provided Buchanan with an opportunity to apply, once again, his political economy framework although he showed less confidence than in the 1950s.²¹

"Should the students have a share in controlling university policy", Buchanan (1968a, 666) asked in the first sentence? The whole problem of student unrest boiled down to this question, which, he argued, raised essentially a constitutional problem. Students' protests were interpreted as pressures to change the constitution ruling the university. Although Buchanan (1968a, 666) condemned the student's violent behavior, he considered that he "can, and does, with conviction, claim a 'right' to an increased participatory role". Frictions and violence

²⁰ The courts argued that that those plans violated the equal protection clause. Echoing the criticisms already leveled by the Commission on Civil Rights, the courts often commented that vouchers had only been used to foster the creation of mostly segregated schools and, therefore, circumvented *Brown I* and *II* (Salsbury and Lartigue Jr 2004, 20-22).

²¹ Buchanan learned that he was hired at UCLA on January 22, 1968, effective July 1st 1968 (Hitch to Buchanan, 22 January 1968, BA).

emerged because scholars were mostly opposed to welcome the student “as a participant in a truly democratic society” (667). “The senior academician” only considered that students needed be tutored and, in the face of their protests for change, “argued persuasively for the preservation of simple constitutional order and attitude”, that is, for the preservation of the “set of traditions and practices” that characterized the “long lived institution” (667).

Soon, the paper found its real focus as it turned into an attack on most of these academics who, according to Buchanan, were behaving inconsistently. In Buchanan’s depiction, the “senior academician” was “proudly liberal in his value standards”, but rather conservative when it came to defend the traditional institutional setting of the university (667). Moreover, these “left liberal” (671) academicians had played a crucial role in influencing today’s student protests, Buchanan argued, when they had supported the notion of civil disobedience (supporting restaurants sit-ins for instance) with regards to Southern laws. In standing up for the Warren Court’s decision that, to Buchanan, had overthrown “traditions of legal order” (669), they had promoted the Court’s “disregard for constitutional order” (668) and were now inconsistently complaining that students were doing the same within the narrower confines of the University. Yet, “How is Martin Luther King's moral decision to be distinguished from Mario Savio's or Mark Rudd's”, Buchanan asked (668)? The answer was simple, he explained: Liberal academicians were simply imposing on others their own value-judgment on what was right and wrong. This was exactly what the Warren Court had done, Buchanan further noted, when the Court had declared “to be ‘constitutional’ that which it conceives to be the ‘good’ and ‘true’” (673). Likewise, liberals were imposing *their* vision of a good society. Thus, Buchanan concluded that “arrogance and intolerance concerning the equal freedom of others displayed so aggressively by the student revolutionary are simply miniaturization... of characteristics that the postwar academic liberal has exhibited” (670).

Despite the lack of evidence suggesting that Buchanan’s comments directly related to his

own experience, it is nonetheless interesting to draw a parallel between the left-liberals of his article, who occupied “seats of power in many universities” (678), and the administrators of UVa. Buchanan felt that they had considered his and the Jefferson Center’s values to be “wrong” and had imposed their own values as if they were the “right” ones. In Buchanan’s ideal constitutional setting, the members of Center should have had the right to exercise their specific values, all the more that the related research strategy had been previously endorsed by the Darden administration in 1957 and positively sanctioned by the marketplace of ideas. But it was felt that Shannon and Harris had single-handedly rewritten, on political and ideological grounds, the institutional arrangement tying the University and the Jefferson Center. It was not without irony, thus, that Buchanan presented this paper as a farewell address to a group of students on May 23, 1968. It is clear that by then, Buchanan felt that the institutional setting of the university had dramatically changed. From a place where collective decisions were made only consensually, and where individual autonomy was respected, it had shifted without consensus towards a politicized environment where scholars were being censored and students attempted to force the adoption of their preferred rules.

Interestingly, Buchanan’s (1968a) solution to the problem posed by students’ protests actually solved his own problem of lack of freedom within academia. He suggested, first, to adopt the position of the political economist, which, six years after the *Calculus of Consent*, was renamed the “constitutionalist”. This approach, he claimed yet again, did not impose any particular views on others but made room for every view, value and preference. This was only possible because the constitutionalist, also equated to the “libertarian”, “desires to minimize coercion” (679). Echoing the views he had developed as early as 1959, the constitutionalist’s objective lies “in developing and in maintaining an institutional structure within which, all of us, and others, can exercise the freedom to differ in basic values and to behave differently in accord with those values” (1968a, 674). This would imply a “drastic reduction in the number

and scope of centralized decisions that are made” (678). Buchanan explicitly agreed with the student revolutionary, in that “the constitutionalist may willingly acquiesce in major dismantling of the existing power structure of the modern university” (678). Given the extent of the disagreement between opposing factions, the ideal negotiated constitution would allow for only a limited centralized collective decision-making. Therefore, the constitutional solution echoed Buchanan’s previous support of vouchers, in that it promoted the ability of markets to reach collective outcomes that avoided unwanted collective decisions.

To be optimal constitutional rules, in Buchanan’s mind, they had to secure consensus. If not, Buchanan noted that the only alternative would be authoritarianism: “the will of the strongest must be imposed on all” (678). This is where Buchanan started to show some doubts about the applicability of his framework. On the one hand, the threat of authoritarianism, the possibility that liberals may face up their own paradoxical behavior, and the natural appeal of students for freedom, may open the possibility of a constitutional negotiation. But Buchanan’s belief that a new social contract might be enacted mostly by educating the left-liberal and the protesters stood in flimsy grounds. He notably believed that “both the student revolutionary are too intolerant to enter into such an invitation to discussion” (675).

Indeed, contrary to the late 1950s, the context of the late 1960s would prove less accommodating to a change in rules along Buchanan’s lines. Buchanan may not have realized that when defending freedom and autonomy, which he took as the starting point of his analysis, he was behaving similarly as the “left liberal” he was attacking, by promoting his own agenda for the university.²² For instance, Buchanan received a direct and negative response after he sent the paper to Paul Craig Roberts, a professor of economics at the

²²One would note that Buchanan did not claim that he was writing as a professional economist, and not as a citizen, as in 1959. Similarly, he did not put forward his ethical preferences as in 1959.

Virginia Polytechnic Institute (henceforth, VPI), who showed it to a colleague from the department of political sciences.²³ The latter "did not like the paper at all. He called it "gibberish" ... He got quite mad" (Roberts to Buchanan, 6 June 1968, BA). He disliked the ideas of "constitutionalism" and "academic liberalism": "[a] constitutionalist is a red-neck who wants to keep people from smoking pot and to keep the niggers in their place. Your academic liberal does not exist" (ibid.). Indeed, not everyone agreed with Buchanan's vision of the "good society", which he restated here as promoting the "Jeffersonian ideal of least government" (673). Undoubtedly, Kerr's liberal approach to university management implied to arbitrate in order to devise a great number of collective decisions. On the other hand, some radicals rejected the idea according to which the university already allowed for an opened discussion, and could solve problems through the marketplace of ideas (Jewett 2012, 558). Following Herbert Marcuse, who held a position at University of California, San Diego, protesters viewed the marketplace for ideas as controlled by the elite in power. In short, Buchanan's constitutional arguments were unlikely to gather the support of student protesters.

Buchanan moved to UCLA a year after Kerr was replaced by Charles Hitch, a new president who would not lead the University to become a setting favorable to Buchanan's ideas. As Buchanan would soon realize, misunderstandings could only mount, this time through a direct confrontation with the students. The intellectual environment at UCLA would provide, nevertheless, inspirations to refine Buchanan's analysis of the university setting and of the relationship between the market, individual behavior, and constitutions. Interestingly, this period would stand as a turning point in his approach to constitutions, marked by a stronger focus on coercion. His focus on the role of the political economist, consequently, faded dramatically.

²³ VPI is known today as Virginia Tech.

3. Tensions about institutional autonomy: act II

Buchanan's correspondence shows that upon arriving at UCLA, he thought that he was going to find a congenial intellectual environment, similar to the one he had just left in Virginia. After all, Friedman himself labeled the department as "Chicago West" thanks to a "core" of members who had a strong connection to Chicago economics (Friedman & Friedman 1998, 229, see also Allen 2010). Besides William R. Allen, the chair, one found Armen A. Alchian, Jack Hirshleifer, J. Clayburn Laforce Jr, as well as Sam Peltzman, a former Ph.D. student of George Stigler, and Barry Chiswick, a former student of Gary Becker. The hiring policy and research strategies were similar to the ones of the Jefferson Center and the "core" members secured regular visiting professorships for free-market scholars such as Friedman. Right after Buchanan's arrival, they tried to recruit H. Gregg Lewis (from Chicago) and Nutter by resorting to arguments identical to those Buchanan used back at UVa: only the market value of a scholar should be taken into account and other arguments – in particular "ideological reasons" – would be considered as irrelevant (Allen 2010, 230-231).

This strategy was not entirely endorsed by the new administration, though. For instance, Hitch objected hiring Nutter because he came from the same department as Buchanan. Moreover, a number of measures taken by Hitch and his newly appointed (on September 1968) chancellor Charles E. Young, would conflict with the department's idea of autonomy. Indeed, Hitch and Young were trying to make room to students excluded from the higher education system. Young, in particular, was convinced that the current crisis had a social and racial dimension and that "finding a place for ethnic studies 'would contribute to the understanding and resolution of national social problems' and 'would help UCLA to avoid some problems' that other campuses were experiencing" (Trasch 2010, 16). They agreed to give students – in particular those of the recently created Black Student Union– a greater role in the management of UCLA, allowing, among other things, to design a black studies program.

Finally, they created the High Potential Program, designed to admit students that did not necessarily meet the normal criteria, but could succeed with remedial courses. The program was put into place to be ready for September, in such a hurry that “for the first quarter, students went into the local community themselves and did the recruiting themselves” (Dundjerski 2011, 182).

By the fall of 1968, the Black Students Union grew impatient enough to put pressure on a number of departments. They were convinced that, in spite of certain achievements, inertia dominated: some of the departments had pledged to hire minority faculty, but had not done much in that direction afterwards. In their eyes, the department of economics was particularly guilty. They met and pressured Allen to hire black faculty and also asked to be consulted for the selection of the potential candidates – in private meetings, on October 15 and 22, 1968, and then, publicly, in a letter published in the *Daily Bruin* (the UCLA journal) of November 4 (Collisson 2008). Allen told the students, and also wrote in a memorandum sent to Vice-Chancellor Wilson on November 5, that he was not opposed, in principle, to the hiring of African-Americans and even considered for a while getting in touch with the scholars suggested by the students. But not only was he persuaded that the number of black economists was low: he was also not favorable to positive discrimination.²⁴ Race was not a relevant criterion to hire faculties. Only the best candidates should be selected, “where ‘best’ is judged by my colleagues and me according to criteria of talent, skill and promise, entirely regardless of skin pigmentation” (quoted in Collisson 2008, 181). Allen’s violent reactions to the pressures did not ease the tensions, up to the point that, on November 6, anonymous threatening phone calls urged him, again, to hire black faculty and, four days after, a bomb was found at the entrance of the offices of the Department of Economics.²⁵

The bomb-scare came as a shock to most members of the Department, including

²⁴“Brief Chronology” (memorandum by Allen, undated, BA).

Buchanan. The attitude of the administration did not calm their fears. There was a widespread feeling that the Department was not supported by the administration. Word leaked that it would attempt to censure either Allen alone or the whole Department of Economics (Hirshleifer to the department, 20 November 1968, BA). In a special meeting held on November 20 summoned by Hirshleifer, the members of the Department reaffirmed their confidence in Allen – insisting that he promoted “fair and just treatment of students, co-workers, and faculty members without regard to race or ethnic origins” (ibid.) – but also opposed to any attempt of affirmative action, therefore restating in the name of the department what Allen had already said to students.

Once again, Buchanan found himself in a position where he felt his autonomy was being threatened and considered resigning. But the final decision was triggered by the murder of John Huggins and Alprentice “Bunchy” Carter, by Claude “Chuchessa” Hubert in January 1969. In his letter of resignation, published in the *Daily Bruin*, Buchanan explained that he was unwilling to “work in an atmosphere of violence, intimidation, and fear” (Buchanan to Hitch, 20 January 1969, BA). But not only had such an event epitomized the growing violence within the university. Buchanan viewed the shooting as the direct consequence of the policies that Hitch and Young had established and against which he stood strongly. The administration had agreed to develop new programs for minority students while providing them with new hosting institutions. One of them, the “Center for Afro-American Studies” would manage black admissions at UCLA, grant distribution, as well as course and decisions

²⁵Allen said about the BSU members that they were a “group of fascistic specimens who neither know nor care to learn the necessary conditions of viable civilization” (Allen 1968, quoted Collisson 2008, 181). After the bomb was found, he declared to the local television that “the most conspicuous difference between my enemies and the Nazi hooligans of the 1930s was that the latter could make a usable bomb” Allen (2010, 229).

over curricula (Collisson 2008). Huggins and Carter were UCLA students coming from the High Potential Program. Two active members of the Black Panther Party, they were competing with students from the US organization to take control of both the Advisory Council of the Black Student Union and the Center for Afro-American Studies (Dundjerski 2011, 183; Collisson 2008, 112). The shooting happened after another failed attempt to settle on who would take their reins. To Buchanan, the University had recruited “black militants, some of whom have long-standing criminal records, who do not meet standard admission requirements, and who have no conception of a university” (Buchanan to Hitch, 20 January 1969, BA). By giving in to the pressure of minority students, the University had “invited terror in its midst” (ibid.). Eventually, this would lead to the destruction of the university, Buchanan concluded (ibid.).

Although Buchanan resigned in January, the demission was only effective by July. Buchanan kept informed about the situation at UCLA and in California in general, only to witness the administration going in a diametrically-opposed way as he would have wanted. A few days after his resignation, the Academic Senate of UCLA voted a resolution that urged the University to take “affirmative and dramatic steps” to hire more minority faculty (quoted in Collisson 2008, 193). A few months later, students of UC Berkeley and a number of faculty members entered in a massive demonstration during the People’s Park events, protesting against the decision of the administration to transform into a sports field a piece of land already used by the students to organize their off-campus activities. Buchanan and a few others, including Nicos Devletoglou, Hirshleifer and Allen, publicly supported Reagan’s decision to call the National Guard and declare martial law.²⁶ Once again, views of the orderly

²⁶Buchanan’s letter, sent to Hitch, Reagan, and head of Hoover Institution Glen Campbell, read (in capital letters): “We disassociate from Chancellor Young’s implied support of Berkeley – UCLA disrupters. We support current policy, including armed forces and police

process and free inquiry within the University clashed with some faculty and protesters who believed that martial law precisely thwarted free inquiry. Eventually, after seventeen days of occupation, which witnessed the death of one student, James Rector, and the wounding of many more, the troops left Berkeley and the students retook control of the disputed piece of land. These events comforted Buchanan in his beliefs that the administration was giving in to the students' pressures and that rules were being constantly changed without consent.

These events led Buchanan to write with Nicos Devletoglou *Academia in Anarchy* (1970). The book was written during the two months that followed the UCLA murders, "in a great hurry" (Buchanan to Bauer, 1 April 1969, BA). It was, as Buchanan openly admitted to Julius Margolis, "an angry essay" (Buchanan to Margolis, 26 March 1969, BA). This tone might explain why a number of publishers rejected the manuscript.²⁷ But, interestingly, after the preface, Buchanan and Develetoglou (1970) develop an economic analysis, simple but quite dispassionate. This may remind us Buchanan's positions about the economist who may formulate his own "ethical preferences" and still develop positive analyses of the consequences of particular choices of society, in order to inform citizens and contribute to the public debate. But this time, contrary to his papers of 1959 and 1968, the situation was significantly different; the economic analyses, which underlined important constitutional issues, were only helpful to diagnose the situation, but "hardly tell you how to transform the

where necessary, to restore orderly process in the UC" (Buchanan to Campbell). A previous draft even included the following: "including summary expulsion of students and dismissal of supporting faculty" (Buchanan to Campbell, May 22, 1969, BA).

²⁷The book was submitted to various publishers with different titles *Academia in Agony: An Economic Explanation of University Turmoil*, to MacGraw-Hill, and *Academia in Agony: The Economics of University Chaos* to Harper & Row and Markham. It was eventually published in 1970 by Basic Books (BA).

beast into beauty” (155).

Therefore, the book was primarily an attack on the current structure of the public university. Starting with an idea that one finds also in Alchian and Allen (e.g. Alchian 1968, Alchian and Allen 1968), Buchanan and Devletoglou explained that the respective power of students and faculties depends on price paid by the student to purchase education. No tuition means that students, who are “consumers who do not buy”, are obliged to accept what faculties and the administration decide for them. A free tuition system gave students the impression that education was free, leading to its over-consumption. To avoid this tragedy of the commons, universities had put into practice an administrative rationing, which gave abnormal powers to the faculties and the administration: as “[p]roducers who do not sell” (34), they were insulated from the control of the students. Under what the authors called “faculty democracy”, most of the power to change the rules was held by the mediocre faculty members who voluntarily served in committees and attended administrative meetings, instead of working to further research. Moreover, tenured positions protected faculties from outside threats and did not prevent them, in particular “left-liberals”, from “propagandiz[ing]” their own “personal or party values” (49).

To Buchanan and Devletoglou, left liberal faculties and administrators had no incentive to resist the direct demands made by the protester, –“parasitic elements”, for the authors– who understood that it was less costly to protest and make direct demands about degrees and curricula than to “pay” for them. Pressured by the student protesters, the weak left-liberals were, thus, the agents of unwanted changes in the formal and informal rules that characterized the university setting. Little in the university structure could prevent this chaos from mounting, because non-protesters had no incentives and not enough power to stop the minority of protesters while taxpayers, who finance the system, are nonetheless “owners who do not control” anything. Zero tuition dispossesses them from the power they should have

had, the authors concluded.

The tensions within academia could be solved only by changing the constitution of the university, mostly by linking power to property rights, while restraining the power of faculties and administrators. It meant giving more power to those who pay, either taxpayers, benefactors, or students. But less than two years after his papers on students revolts, Buchanan had given up on the possibility that a true constitutional renegotiation might take place from within the academic community. Indeed, “the major barrier... will be posed by faculties”. “As the university is now organized”, Buchanan wrote, “faculties make their own rules. Self-interest, therefore, will naturally prevent constitutional revision” (161). Buchanan repeated this conclusion when Margolis advised Markham not to publish the book, a recommendation that Buchanan found typical of a “liberal academician” whose attitudes were “responsible for the mess that we find ourselves in, and not only in the university” (Buchanan to Margolis, 26 March 1969, BA). Conflict was so prevalent in Buchanan’s diagnosis that, this time, he did not invoke the “positive political economist”, or “constitutionalist” framework. Its methodological premises that rested on social consensus over constitutional changes seemed now completely incongruous.

Buchanan and Devletoglou hoped, nevertheless, that the market, still understood as a process complementary to collective decisions in yielding collective outcome, would provide a way out of the current crisis. In the longer run, Buchanan hoped that the context would prove favorable to the privatization of the system, mostly because the public university, characterized as the “Clark Kerr monstrosity”, “will be deserted by the responsible students, by the respectable faculty member, and the rational taxpayers” (177). The authors argued that competition among private institutions would suit best students’ demands. The authors hypothesized that specialization would lead to the creation of anarchistic universities, gathering the protesters altogether in specific places. Complementarily, private universities

would hopefully attract best teachers and students by offering them stability, and better education in a violent-free environment. Those developments could bring the sort of *de facto* unanimous consent that Buchanan was seeking.

Yet, these ideas were not mere repetitions of what Buchanan had developed since the late 1950s. Another elements important notion for his subsequent frame of analysis was progressively emerging in his call for restoring order at the university and putting university back where it should have been. The urgency of the situation, to Buchanan, dictated that order be restored rapidly. This implied to cope with student violence and posed, again, constitutional issues. Essentially, since threats to freedom came from changes in rules that were imposed by some faculties and administrators at the request of violent protesters, Buchanan and Devletoglou insisted that reducing the “profitability of terror” had to be “governed by existing rules and regulations, written and unwritten” (156). The authors prophesized that short-term responses may come from the external pressures of governing bodies and state legislatures, which could remove part of their financial support to universities. In addition, they might also decide on new laws to increase the administration’s abilities to cope with disorders. Yet, firstly, the authors doubted that such measures would be efficient in curbing unrest. The argument was developed more fully in the first drafts of “Violence, Law, and Equilibrium in the University”, also written in 1969, in which Buchanan (1969a) explained that changing the rules to either increase repression, as Reagan did in California, or secure more compromises, like what the left-liberals did in most universities, were likely to increase violence, due to the particular ways that protesters reacted. Second, and more importantly, Buchanan believed that these measures may also pose a constitutional problem, because they implied changes in rules that were not necessarily subject to discussion and consensus, and which, therefore, nurtured furthermore the erosion of freedom.

All in all, Buchanan underlined that changing the rules of the game while the game was

being played put enormous strains on individual freedom and threatened to destroy academia. By 1969, Buchanan (1969a) had come to the conclusion that the main problem came from individuals (faculties and students alike) adopting increasingly anti-social behaviors that were incompatible with the written and unwritten rules through which scholars, initially motivated by “ethical” conduct, were coordinated. Obviously, Buchanan’s definition of the “written and unwritten” traditional rules governing the university was sufficiently vague to reduce his analysis to his own appraisal of what the university once was and should now be. But this evidenced nonetheless an important shift in Buchanan’s analysis, now focused on the existing constitutional order, its limits and how to enforce it.

4. Back to Virginia: From firmness to private education

Buchanan left UCLA for the Virginia Polytechnic Institute, in Blacksburg, in July 1969. In addition to homesickness, moving there was probably motivated by the possibility to regroup with former students and colleagues from the years of the Jefferson Center, such as Tullock and Charles Goetz. Also of importance, VPI was at the time far quieter than many other campuses (Strother and Wallenstein 2004). It may have been for the role of its president, T. Marshall Hahn who had distanced himself from the segregationist stance of Senator Byrd and had followed the trend of racial integration and coeducation.²⁸ Buchanan (1969b) had hopes that, contrary to what happened elsewhere, the campus would not plunge into chaos, as he explained in a memorandum to Wilson Schmidt, Head of the Department of Economics.

²⁸In 1965, Hahn announced that the Rockefeller foundation had granted VPI with \$100,000 to help the “culturally disadvantaged”. Some of them were whites from the Appalachians, some of them were Black from West Virginia. In 1968, a second grant was given by the Foundation, of \$250,000, for similar purposes, and Hahn declared that the School would add enough money to double the amount. The school was promoted as one that did not discriminate on the basis of race (Strother and Wallenstein 2004, 295).

Starting from a dreadful evaluation of the situation – “Cornell and the University of California are destroyed, Harvard and Columbia may well be. Wisconsin possibly”, Buchanan believed that the “best policy” to avoid such a fate and allow universities to “move up very, very dramatically” was one that “combines flexibility and firmness” (1, emphasis in original), “a respectably strong faculty... [and] a firm administration” (4). From this perspective, VPI “should possess this combination”, he concluded. It “will, and must, remain an island of sanity in a rapidly deteriorating structure of higher education in the United States” (4).

His emphasis on firmness, which his work during 1969 already hinted at, was deepened in the 1970s, notably by Buchanan’s (1970a) contribution to *Economic Factors Affecting Financing of Education* published by the National Educational Finance Project.²⁹ It bore on the attitude of taxpayers towards financing education in the present situation of disruption of the educational process. All the elements already found in his recent attacks on the public university were present, from the behavior of student protesters –now the “new barbarians”– who transformed universities into the “launching pads for social reform or revolution”, to the “the spineless faculty and administrative personnel who failed to deal promptly and effectively with the perpetrators” (283-285). Buchanan now spoke of the “treason of the intellectuals” (284), who essentially lacked of courage to oppose the students. Pointing again to the negative influence of liberals and the Warren Court on protesters, who were transforming the university into “an institution for changing social values, for transforming the culture of America” (285), Buchanan did not doubt that taxpayers would balk at paying their taxes to finance a system “reorganized to suit either HEW officials or the federal judiciary” (283).³⁰ Indeed, as he had already hinted at in *Academia in Anarchy*, one solution of the ongoing crisis may come from the behavior of the “owners” of the university.

²⁹The typed version is dated from the 24th of March (BA).

³⁰HEW: US Department of Health, Education and Welfare.

Consequently, he urged taxpayers to stop financing education if administrators and faculties were not able to stop violence and restore order within universities.

Unfortunately, the events of May 1970 did not calm his concerns that this solution would prove eventually unrealistic. During a violent demonstration this month, four students were killed by the Ohio National Guard at Kent State University. This spurred students of 350 universities to go on strike. Protests led 500 campuses to close, while violence led a number of Governors to declare their universities in a state of emergency, deploying the National Guards to curb rioting (Anderson 1995, 351).³¹ At VPI, Hahn attempted to limit the unrest by a strict application of the various disciplinary procedures.³² Buchanan could only agree with Hahn (1970) when the latter wrote to the students and faculty that “[w]hile university procedures should be utilized as long as possible, anarchy must be dealt with in appropriate manner”. Moreover, Hahn shared with Buchanan and other free market economists at the time (e.g. Breit and Yeager, at UVa, George Stigler and Friedman, at Chicago) the belief that the

³¹ The four students were killed during a demonstration against the U.S. invasion of Cambodia on April 30, 1970. The military move, Terry Anderson (1995, 349) explains, was felt by the students as Nixon’s betrayal to his promise not to expand the war. Activists were followed by citizens, civil servants and others in calling for a strike. Sixty Colleges were on strike and violence erupted at Ohio State, Stanford, the University of Maryland, and Kent State (Anderson 1995, 350).

³² Hahn called for the intervention of State Police forces to remove the 150 students who had occupied and barricaded William Hall on May 12. The students were “suspended from the university and arrested”, being considered as trespassers. Hahn (1970) concluded that “these are strong and regrettable steps, but there was no alternative in order to maintain public safety and to continue operations of the university”, while he maintained police on campus as long as necessary.

university should not take a stand as a collective entity (Hahn to Goetz, 11 May 1970, BA).³³

But Hahn's firmness contrasted to what Buchanan saw happening in many universities, starting with UVa. There, Shannon not only failed to take such firm stand at the time, but contributed, in the mind of Buchanan and a number of his colleagues, to politicize the university. Indeed, on May 10, Shannon had publicly joined more than thirty university Presidents in condemning the U.S. invasion of Cambodia during a meeting, and had invited the faculty members of the University to join him.³⁴ Shannon then suggested that the students of UVa could be accommodated during the examination period "to permit [those] who desire to do so to concentrate on constructive action in the redirection of the nation's way policy" (in Culbertson to the Department of Economic, 22 May 1970, BA). In Hahn, Buchanan had found an ally of importance and took every possible step to promote him publicly. At the same time, this publicity was also orchestrated to undermine Shannon's decisions. Among other reactions, Buchanan notably wrote to senator Garland Gray in support of his recent criticisms of Shannon, and recommended him that taxpayers should act as a counter pressure by removing their support to the University (Buchanan to Gray, 15 May 1970, BA). At least, they should "insure to the administrators of these institutions that financial support will, in fact, be

³³□ A passage of a memorandum by Stigler is quoted in Breit's letter to Shannon of May 13 1970: "If the University endorses idea X, any opponent of idea X has been censured. It matters not whether X is a nearly universal moral conviction—such as that the dignity of man must be defended or the most transitory and partisan endorsement of a man or scheme. If there were absolutely certain truth, the university community could endorse it with little cost; however, the very first of these certain truths has yet to be determined" (Breit to Shannon, 1970).

³⁴□ He circulated a letter that he invited faculties to sign (Breit to Shannon, 12 May 1970, Culbertson to the Department of Economics, 13 May 1970, see also Anderson 1995).

dependent on the responsible maintenance of the educational process (Buchanan to Gray, 15 May 1970, BA).”

Yet, Buchanan wondered if such sanctions could be implemented, or even yield the desired outcome (Buchanan to Yeager, 27 May 1970, BA). Buchanan noted that Reagan had eventually failed to cut financial support to the University of California significantly. Perhaps legislators would cut their supports indifferently to any public institutions, which would not be favorable to VPI. But Buchanan confessed being even less optimistic: he believed that the firm stand of VPI would not hold against the vast pressures to politicize the University nationwide, “with the mob deciding issue by issue what shall be the university policy”(Buchanan to Yeager).

This observation was at the heart of “The Samaritan's Dilemma”. The paper was eventually published in 1975 and is known to deal with philanthropy (see, for instance, Fontaine 2007). But Buchanan wrote it only a few days after the Kent State events, with the problem of student protesters in mind.³⁵ This is clear from two examples he used in the preliminary versions but removed from the published one. The first example introduced an alumnus of the Ivy League community, a successful business man who decided to dispose of a part of his fortune and remained unwilling to remove his support to his beloved university despite of the way administrators and faculty had handled student unrest. In the second example, members of the board of Regents of a “dominant western university”, also displeased with the behavior of administrators, remained unwilling to remove the President and administrators from office. Both the alumnus and the board of Regents were, according to Buchanan, facing the dilemma that faces any Samaritan helping someone who does not reciprocate this help: if the Samaritan generously gives money to a recipient, he is “exploited” by the selfish recipient who takes the money without giving anything in return; but if he cuts off the gifts, to avoid exploitation,

³⁵The first draft is dated of May, 20 and the second of May, 29 (BA).

then the Samaritan suffers from a loss because he cannot behave as the altruist he wishes to be. In the context of the university, the dilemma meant that students attending public universities benefited from taxes and donations by private individuals. When disrupting the orderly process within the university, they exploited the Samaritans, because they did not study, and therefore did not behave according to what the Samaritan had initially paid for.

In this setting, exploitation was unavoidable, mostly because the solution resting on the courage of Samaritans, that is, to suffer short run utility losses, was unrealistic. In “The ‘Social’ Efficiency of Education” (1970c), in which Buchanan already applied his dilemma to the context of student protests, he noted that “neither the ordinary citizen nor his political representative is willing to take such steps toward corrective solution”, that is, “enforce the rules of the existing system”, “cut off public and private financial sources” or “close down the universities” (660). As he also wrote to senator Gray, “university administrators who do not have personal strength of character are likely to yield to the internal pressures of militant, activist students, and liberal, spineless faculty members, helping this way to secure temporary internal peace” (Buchanan to Gray, 15 May 1970, BA). Therefore, by the end of 1970, the notion of courage, which intuition had come initially from Buchanan’s rant on left liberals in 1968, developed into an important idea that was now translated into one’s ability to suffer some short run loss in utility. Moreover, Buchanan’s dilemma, as the published paper argues, was not only characteristic of the university setting, but more generally of the modern man. As he already noted in 1970, the Kent State events stood as a “shift in American policy”, where the “modern man finds himself being rapidly forced to allow the parasites entry directly into the political-decision process” (Buchanan 1970c, 660).

As demonstrated in “The Samaritan's Dilemma” and, previously, “Violence, Law and Equilibrium” and *Academia in Anarchy*, once anti-social behaviors emerged, there was no way to avoid social disorganization while the game was being played under current rules.

Eventually, there was no way to avoid a constitutional revision. The second solution, thus, would be to adopt specific constitutional rules, ones that would be decided *ex ante* so that the gift made by the Samaritan might be delivered under specific constraints: strategic behaviors would then be avoided. But in 1970, Buchanan (1970c, 661) was no less skeptical of the possibility of negotiating a new social contract for the university than in 1968, but added now that it was highly unlikely that a “modern man” could be capable of closing “off the parasitic option now available to the student (sic) and post-students who refuse to conform to ordinary rules of conduct”.³⁶

It was not so much the situation at VPI – that seemed under control – that worried him but rather what was happening at his previous universities, UVa and UCLA. At UCLA, the department of economics was under increasing pressure to hire black faculty, notably (Allen to Campbell, 12 September 1969, BA). Eventually, Allen worked out a solution by recruiting Thomas Sowell, a black economist who had done his PhD under the supervision of Stigler, but he failed once again to hire Nutter (Collisson 2008, 213, Allen to Campbell). Moreover, the hiring of Angela Davis, “an interesting specimen of the Very Far Left” and a “subversive radical” according to Allen, evidenced to him the cowardice of administrators and the differential treatment of the notion of freedom of inquiry at UCLA, although one should note

³⁶These considerations were important in Buchanan’s analyses of anarchy and behavior at the pre-constitutional stage, as developed in his 1975 book *The Limits of Liberty*. Besides Buchanan (2007) himself, a few commentators, e.g. MacKay (1989) and Reisman (2015, 79), have noted the importance of the workshop on anarchy organized at VPI by Winston Bush during the academic year 1971-1972. Undoubtedly, the seminars played a part in nurturing Buchanan’s views that without rules to constrain their behavior, people are uncooperative and will choose to cheat whenever possible. Yet, it is not established with great precision what parts of *The Limits of Liberty* were really the product of those.

that Davis's contract was, eventually, not renewed by the Regents in 1970 (Allen to Campbell).

In such a context, Buchanan helped the "core" economists of UCLA to work out a solution that was deeply inspired by his dilemma. This solution took the form of the Foundation for Research in Economics and Education (FREE), for which Buchanan "provided the initial impetus", and which was financed "from sources initially cultivated by [Buchanan]".³⁷ Economists such as Laforce, Allen and Alchian would drive the FREE, while Buchanan would serve on its board. Its mission was envisaged as securing the recruitment of a number of quality economists who would cluster in the UCLA Department, making it a powerful bastion to resist campus pressure and to better train students ("A Proposal", 1970, BA). Because FREE was an independent foundation, direct donations to this institution would prove to be far more effective than donations to the University, as these would not be diluted in the University's budget, avoid the University's interference and thus, avoid the exploitation of the donors by the parasitic protester. Hence, FREE was a private institutional solution that could finally give Buchanan certain hopes.

Thus, like in his early work on constitutions of the 1950s, Buchanan's framework still allowed for an important role for the market to play. In 1971, Buchanan (1971) surprisingly observed that: "[e]ffectively competitive organization is the central characteristic feature of higher education in the United States", even when the government played a major financial role. After a whole book and a number of papers devoted to the lack of proper incentive

³⁷<http://publicchoice.info/Buchanan/files/alchian.htm>. Among the potential donors were William French Smith, a Regent of the U.C. and Reagan's personal lawyer in California, who had been, since 1966 elections, a member of Reagan's "Kitchen Cabinet" (<http://www.nytimes.com/1990/10/30/obituaries/william-french-smith-dies-at-73-reagan-s-first-attorney-general.html>).

structure within academia, which threatened to destroy the whole of American society, the statement seemed quite incongruous. Yet, it is likely that Buchanan's own experience played a part in establishing that, after all, "this absence of effectively competitive buying of higher educational services... does not prevent the presence of effective competition on the selling or organizational side of the market" (ibid.). The solution to the paradox rested, thus, in the fact that universities were competing against one another. Thus, "[w]e can say that there is no centralized decision-maker or authority which imposes external controls on the internal processes of production in the separate institutions [colleges, universities]" (ibid.). In other words, some institutions, like UCLA or UVa, might have chosen to disregard what Buchanan saw as the proper organization for academic practice, essentially departmental autonomy, but eventually, the marketplace provided a sufficient pressure so that idiosyncratic endeavors that were nonetheless well rewarded by market for ideas would find a welcoming place.

The conclusions of the paper read as Buchanan's admitting having committed mistakes when choosing to go to UCLA, but also having mistakenly taken the UCLA and UVa situations as the illustrations of the certain destruction of the university. Buchanan (1971, 5), thus, concluded: "so long as effective competition among many separate and independent producing units can be obtained, the internal organization of a particular unit or units does not matter." The university was not out of danger, though, as the harmful intervention of the state always loomed. But compared to the terrible perspectives envisioned a few years before, Buchanan's early confidence in the restraining powers of the market, especially in situations where changes in the constitution threatened individual freedom, remained intact – perhaps even stronger, even in a society where "parasitic" behavior had soared dramatically.

5. Conclusion

Buchanan's constitutional theory may seem highly abstract, as it stands at the crossroads of economics, philosophy, and political science. Nevertheless, his works addressing education

and higher education show that Buchanan strove to apply his theoretical insights to concrete social problems, more particularly to problems involving changes in the rules of the game. These studies on education are of fundamental importance if one is to analyze the history of Buchanan's ideas about the "good society" and the role that markets, collective decisions, and constitutions, play in its defense. In particular, Buchanan started to introduce important theoretical changes when he felt that his initial approach did not provide him with sufficient understanding of what was happening right in front of him –and, for that matter, provide relevant and workable solutions. In the particular case of Buchanan as in the case of many other economists, historical analysis is useful in understanding the development of one's thought by bringing into light elements from the historical, social, and political contexts. Like many other economists, Buchanan was heavily influenced by the changes in the American society.

By 1971, Buchanan's thought exhibited a mix of confidence and fear. He remained convinced that the market process could hold in check a number of unwanted renegotiations of the rules of the game, as it was already the case in the 1950s. But, at the same time, Buchanan had lost his confidence in individuals' ability to peacefully negotiate mutually beneficial constitutional provisions and reach a consensus. This pessimistic outlook was directly related to Buchanan's own experience of student unrest, and his perception of how his colleagues had behaved. Parasitic behavior, as he called it, now threatened to disrupt the whole American society because, as Buchanan came to theorize, the current rules of the game had not been decided with those behaviors in mind. Trapped in the Samaritan's Dilemma, Buchanan concluded that the modern man was weak. Constitutions, therefore, had to be placed, once again, at the heart of the analysis, in two distinct ways. In order to get out of the social chaos in the long run, specific rules needed be unanimously approved, ones that would give a central role to the markets to play and, more importantly, exclude the anti-social

behavior of “parasites”. But in cases where this would prove impossible, current constitutional rules had to be enforced to restore order. At this stage, Buchanan became convinced that coercion and control could be necessary (Marciano 2016). This led him to rationalize what he had been promoting at UCLA and VPI, that is, the strict enforcement of the prevailing order ruling academia, in the concept of the “status quo”. These were the years of *The Limits of Liberty* (Buchanan 1975b).

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