

POLITICAL ECONOMY AND THE PREDATORY STATE

by

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DEDICATION

For Meenal. None of this would have been possible without your love, support, and encouragement. Let's never do this again.

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ABSTRACT

POLITICAL ECONOMY AND THE PREDATORY STATE

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This dissertation studies the relationship between individuals, firms, and the state in three different contexts. In an ideal world, the state is to fill both productive and protective roles. However, all too often state institutions are used to extract wealth, protect privileged interests, and impose policies that run roughshod over the preferences of the citizens the state is ostensibly acting in the interest of. In short, the protective state can very quickly become the predatory state.

Given this, one of the central questions in political economy is how the predatory aspects of the state can be constrained. To answer this question, we must have a thorough understanding of the ways in which real world predatory states, both past and present, have functioned. In addition, we also need a working knowledge of how constitutional rules can be arranged so as to prevent the state from straying into the predatory realm. To effectively craft such rules, a reconsideration of how the preferences of citizens are to be represented in the constitutional structure will be necessary.

The first chapter of my dissertation is entitled “An Economic Theory of personality cults.” I provide a rational choice explanation for the existence of leader, or personality cults. Personality cults are defined as established systems of veneration that surround political leaders, and to which all members of a society are expected subscribe. All of these cults have a number of stylized features in common: the claims made by the cult are bizarre and implausible, the cult is directed at all members of society, cult rituals are to be performed in public, and deviations from the cult are quickly and harshly punished. Given these bizarre features, personality cults have attracted much attention from social scientists, but a definitive explanation for them has not been provided. I argue that personality cults allow autocrats to develop reputations for engaging in costly punishment, allowing them to maintain their power and successfully exploit their citizens.

Chapter two, co-authored with Peter T. Leeson and Tate Fegley, looks at the role the predatory state plays in awarding economic privileges to certain groups over others. Indeed, recognizing and identifying such cases of rent-seeking is one of the hallmarks of public choice theory. We apply these economic insights to study the regulation of proprietary, or “quack” medicines in 19th century Victorian England. These regulations have been lauded as triumphs in public health and a victory for the public interest, but we argue that rent-seeking frameworks can better explain the attitude the state took towards proprietary medicine vendors. In effect, the state once again acted in a predatory capacity and applied regulations that harmed the sellers of proprietary medicines to the benefits of

their competitors in the medical and pharmaceutical fields. This paper was published in *Public Choice* in 2020.

Lastly, the third chapter of my dissertation uses the work of James Buchanan to study the role that experts play in democratic decision-making. This chapter was published with Peter J. Boettke in *Public Choice* in 2021. We explore three key elements of Buchanan's thought. The first is the importance of "the relatively absolute absolute", a concept learned from his mentor, Frank Knight. The second is Buchanan's approach to "truth judgments" in politics, and their status in our political discussions. Third, we draw on Buchanan's insights in his 1959 paper "Positive Economics, Welfare Economics, and Political Economy" to show how political economists should participate in this decision-making process—not as expert philosopher-kings, but as co-equals with their fellow citizens. Finally, we illustrate Buchanan's system of thought in action by presenting two case studies: Virginia education policy in the wake of *Brown v. Board of Education*, and the 1928 Supreme Court ruling in *Miller v. Schoene*.

CHAPTER 1—AN ECONOMIC THEORY OF PERSONALITY CULTS

1 Introduction

Since 1948, the Kim dynasty has ruled North Korea with an iron fist. The regime has been remarkably resilient, surviving the fall of the Soviet Union, near constant economic catastrophe, and devastating famines. Perhaps unsurprisingly, a robust propaganda apparatus is a key component in maintaining the stability of the regime. However, the North Korean propaganda machine has a peculiar feature: it produces and promotes claims that are self-evidently, unequivocally, and to outside observers even comically, false.

The stories about the Kim cult are well publicized in Western media outlets. According to the Korean Central News Agency (KCNA), the current scion, Kim Jong-Un, could drive a car by the age of three, and at eight years old was able to do so at a speed of eighty miles per hour. Before this, he demonstrated exemplary marksmanship, exhibiting the ability to fire a gun and hit a light bulb from over one hundred yards away. Since then, his mental faculties have only grown—according to one report, the young dictator had developed a drug which was capable of curing AIDS, Ebola, cancer, aging, epilepsy, impotence, and even the common cold. His abilities are not restricted to the sciences, though—upon a 2017 visit to the country's highest peak and his father's

supposed birthplace, Mount Paektu, he was able to control the weather itself, taming a wintry blizzard and turning it into a cloudless and picturesque scene.

Such patently bizarre claims are commonplace in North Korea. In fact, they form the core of a carefully planned and orchestrated personality cult centered on the leaders of the Kim regime. A personality cult can be simply defined as “an established system of veneration of a political leader, to which all members of a society are expected to subscribe.” (Rees 2004, p. 4.) While the North Korean example is probably the best known to contemporary audiences, personality cults have been a fixture of authoritarian regimes for most of the 20th century. The cult of Joseph Stalin was nearly ever-present during his time as the leader of the USSR (Tucker 1979, Plamper 2012) and relatively smaller but still powerful satellite cults existed in countries within the Soviet sphere of influence. Personality cults have also developed in countries such as Romania, Albania, Libya, Syria, and Iraq. Each, while different along certain margins, promoted visions and myths about their respective political leaders that were fanciful to say the least.

The puzzle this presents is obvious: if the content of personality cults is so outrageous, what purpose can they serve? Substantial resources are dedicated to their maintenance¹, and leaders take their cults incredibly seriously. The costs to violating or not perfectly conforming with the expectations of the cult are not negligible. Those who are deemed to speak against the grand qualities of the leader or purposefully damage images of them face expulsion from the party, denial of employment or housing

¹ Some estimates in North Korea have pinpointed the cost of the cult as being as high as 40% of GDP. In Maoist China, Mao badges—metal pins adorned with the visage of the Great Helmsman—were in such demand that a shortage of aluminum struck Chinese industry.

opportunities, imprisonment, or even execution. Further, personality cults are directed and broadcasted towards the entire population at large—both elites and commoners—as well as the outside world.

This paper uses rational choice theory to explain personality cults and their various manifestations. My approach mirrors that of Leeson (2010.) Leeson argues that the profit maximizing strategy for 17th and 18th century pirates was for them to develop reputations as insane brutes who would respond to the slightest provocation with incredibly cruel punishments. By doing so and advertising their reputations through survivors and the news media, pirates were able to curtail resistance from their victims when they engaged in plunder. Being aware of these reputations, those who had the unfortunate experience of being accosted on the high seas were much less likely to resist and take actions that could destroy loot and minimize the pirates' take. Importantly, punishing those who destroyed booty was costly for pirates: violence would not bring the goods back, and the act of punishment posed very real dangers to pirate crews if their victims fought back. However, incurring costs through torture in such situations could help pirates cultivate reputations for punishing those who flouted them even when it was costly. Torturing those who stepped out of line could thus be viewed as a form of “investment” on the behalf of pirates, providing incentives for future victims to not take actions harmful to the plunderers' bottom line. My argument posits that autocrats face a similar difficulty. Autocrats have two main goals: to stay in power and maximize their wealth. One way they can do this is by using repression. However, repression is costly for

them and present a credible commitment problem. Reputations for punishment built through personality cults allow them to solve this issue and better achieve their goals.

My paper contributes to three strands of literature in political economy. The first is the public choice analysis of autocratic governance pioneered by Tullock (1974, 1987), Wintrobe (1990, 1998), Anderson and Boettke (1993), and Kurrild-Klitgaard (2000). Using rational choice theory, research in this area has shed considerable light on the problems and institutional solutions related to governance in autocratic regimes. Second, I contribute to the literature on the economics of revolution (Tullock 1971; Kuran 1987, 1989, 1991, 1997; Kurrild-Klitgaard 1997, 2000, 2004; Leeson 2010b.; Apolte 2012; Acemoglu and Robinson 2006.) Finally, my theory contributes to the existing literature on personality cults and unpersuasive propaganda (Wedeen 1999; Shih 2008, Marquez 2016, 2018, 2020; Huang 2015; Guriev and Treisman 2019; Crabtree, Kern, and Siegel (2020).) Special attention to this last category of literature is given below.

The earliest accounts of personality cults draw on Max Weber's concept of "charismatic authority"—an authority that creates an emotional bond between subjects and a political leader. In this framework, personality cults arise spontaneously and provide leaders with legitimacy. However, this explanation and other "legitimacy" based theories ultimately fail, largely because the key claims that constitute personality cults are self-evidently false, and this fact is known to citizens, elites, and the autocrat. For propaganda to be effective in persuading citizens of their leaders' right to rule, it must be believable, and if personality cults do not seem to be persuasive, they must serve another function.

More sophisticated treatments of personality cults have since been developed. Shih (2008) argues that when there is a norm against personality cults, the cult provides individuals with a way to credibly signal loyalty by engaging in “bootlicking” behavior. However, this theory does not explain cults where such norms against extravagant praise do not exist, and Shih’s analysis is largely confined to early ideological campaigns in Maoist China. Wedeen (1998, 1999, 2002) provides a detailed study of the cult of Syrian president Hafiz al-Asad. Wedeen notes that goal of the Asad regime is not to get citizens to believe in the personality cult, as it was self-evidently false, but rather to get them to act *as if* they believed the cult (Wedeen 1998, p. 506.) Thus, by requiring citizens to go along with absurd cult practices, the regime can demonstrate its power by forcing citizens to go along with the insanity, as well as “cluttering” the public space with empty rhetoric (Wedeen 2002, p. 733.) Wedeen’s analysis, though, does not rely on a theory of reputation, and does not provide more general insights into the rise and fall of cults.

Most similar to my theory is Huang (2015) who provides a theory of unbelievable propaganda. Huang’s argument relies on signaling theory: by producing intentionally unbelievable and unappealing propaganda, governments can send a signal of their strength to citizens. While this model can help us understand the nature of absurd propaganda, Huang’s work does not focus explicitly on personality cults, and it is unclear in his theory why some authoritarian governments would cease producing unbelievable propaganda, as doing so would brand them as a “weak” government. Lastly, a forthcoming paper by Charles Crabtree, Holger Kern, and David Siegel uses rational choice theory to explain personality cults. Crabtree, Kern, and Siegel argue that

personality cults provide dictators with a way solve the problem of adverse selection when it comes to hiring subordinates. In their theory, individuals who participate in cults are also the type of people leaders want to employ to help bolster their rule. However, as the authors note, their theory cannot explain why non-elites are required to participate in the cult, while my theory does. There is also the inherent difficulty with cult models that rely on separating equilibria. As Marquez (2013) points out, so long as the incentives for cult participation are sufficiently strong, loyal and disloyal citizens will send the same signal.² And finally, this theory does not explain why personality cults are ultimately abandoned by autocratic governments that had previously employed them.

The paper proceeds as follows: section 2 provides a history of personality cults and the process of their construction. Section 3 presents some economics of autocracy and outlines a theory of personality cults that shows how they can help autocrats deal with the problem of costly punishment. Section 4 applies this theory by studying the way various real-world personality cults functioned, emphasizing how their workings comport with the predictions of my theory. Section 5 concludes.

² I also thank Pete Leeson for making this argument earlier in personal conversations. For more of Marquez's critiques of Crabtree, Kern, and Siegel, interested readers should consult his highly informative blog: <https://abandonedfootnotes.blogspot.com/2020/07/unscrupulous-flattery.html>

2 Personality Cults in History

Adulation and praise of leaders is nothing new in politics. So long as there have been individuals in power, there have been sycophants tripping over themselves to sing their praises. Even in liberal democracies like the United States, something like “cults” can be said to have arisen surrounding institutions like the American presidency.³

While cult-like aspects can be identified in democratic societies, true personality cults are the children of autocratic regimes⁴. Following Rees (2004), I define a personality cult as “an established system of veneration of a political leader, to which all members of society are expected to subscribe.”⁵ Rees notes that personality cults are omnipresent and extravagant phenomena, and are expected to persist indefinitely during the leader’s tenure—they are not one-off displays of propaganda or simple public events. The earliest modern personality cult can be attributed to Napoleon III of France who made use of public spectacles, paid cheerers, and quashed alternative views of the cult

³ Healy (2008) presents an account of the development of a “cult” around the American presidency. Political scientist Xavier Marquez has applied many of the theories described later to analyze the presidency of Donald Trump (<https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/10/why-trump-administration-officials-try-so-hard-to-flatter-him/>)

⁴ As with anything, exceptions can be found. A cult of sorts began to develop around Maurice Thorez, the leader of the French Communist party from 1930 to 1964 (Bulaitis 2018.) Unfortunately, little formal research on the cult of Thorez exists. However, full-blown personality cults of the kind that surround Stalin, the Kim family, Matyas Rakosi, and others are not found in functioning democracies.

⁵ Though discussed mainly in a modern context, cult-like phenomena have existed in political life for centuries. In ancient Rome, for example, cults began to emerge around different roman emperors, with said emperors being elevated to the level of Rome’s other traditional deities (Price, 1985.) Medieval rulers also bolstered their rule with supposed support from higher powers, more commonly known as the “Divine Right of Kings” (Figgis, 1886.) And of course, ancient Egyptian pharaohs were seen as no less than incarnations of the god Horus himself. However, Plamper (2012) has argued that personality cults as we know them require the development of mass media to thrive. Without mass media, and a public sphere that is totally controlled by the state, autocrats will find it difficult to institute a personality cult, largely due to the contestability of media spaces. For more on media freedom and economics/political development, see Gentzkow and Shapiro (2008), Coyne and Leeson (2004), and Leeson (2008.)

through “censorship and other means” (Plamper 2012, pp. 26-28.) Since his rule, personality cults have become more common and more absurd in modern-day autocracies.

Perhaps the most prominent cults in the 20th century were those present in the Soviet Union and satellite nations in its orbit. Lenin, the hero of the Russian Revolution, saw a cult begin to form around his person though he actively resisted it and eschewed scenes of public praise with a few exceptions, such as during his fiftieth birthday (Tucker 1979, p. 347.) The personality cult truly reached its apex under Joseph Stalin, who actively promoted and built a personality cult around himself. The intensity of the cult tended to wax and wane, ratcheting up in the aftermath of the assassination of Sergei Kirov in 1934 (Davies 1997, p. 133) as well as during the failures of the forced collectivization drive and Stalin’s “Great Purge” from 1936-1938. The cult of Stalin continued to grow in stature and prominence as his power became ever more uncontested.

After the allied victory in World War II, personality cults became prominent fixtures in nations within the USSR’s sphere of influence. Cults were created around Hungary’s Matyas Rakosi (Apor 2017), Albania’s Enver Hoxha (Fevzui 2016), Romania’s Nicolae Ceausescu (Tismaneanu 2003, pp. 187-232), Yugoslavia’s Josip Broz-Tito (West 2011), and Poland’s Boleslaw Bierut (Main 2004, pp, 179-194) to name some. And as has already been mentioned, cults of personality existed in autocratic regimes outside of Eastern Europe. Most notably, Mao Zedong organized a cult around himself in the People’s Republic of China (Leese 2007, 2011.) The cult around the Kim family North Korea is perhaps the best known example of compulsory leader veneration

today, and cults could be found in the middle east around figures like Saddam Hussein (Sassoon 2011), Muamar Qaddafi (Vandewalle 2012; Pargeter 2012), and the al-Asad family in Syria (Wedeen 1998.)

While personality cults at their height may have seemed indestructible and irreplaceable, the fall of cults in countries influenced by the USSR came rapidly after Stalin's death in 1953. After his demise, a period of "collective leadership"—where no one member of the Soviet Politburo was able to assume complete control—was ushered in. Later, some deft political maneuvering saw Nikita Khrushchev ascend to political primacy. One of Khrushchev's major initiatives was to begin a process known as "De-Stalinization", which significantly downplayed Stalin's importance to the communist project and for the first time opened him up to criticism for the wave of terror and repression he had orchestrated. Most importantly, Khrushchev strongly denounced "the cult of personality" in what came to be known as "the Secret Speech" given at the 20th Congress of the CPSU in 1956. While the effect was not immediate and the initiative faced various degrees of resistance, the cult around Stalin was deconstructed and other leaders in the Eastern Bloc who had their own personality cults were forced from power.

This was not to mark the end of cults, however. Khrushchev's actions contributed decisively to a worsening of relations and eventual parting of ways between the USSR and the other pre-eminent communist power at the time: Maoist China. While Mao initially curtailed his personality cult in response to Khrushchev's critiques, he and his regime eventually found a workaround and the cult saw a resurgence, especially during the Cultural Revolution. Mao's cult continued apace until his own death, and when Deng

Xiaoping took control of the party in 1978, he dismantled the personality cult as an institution. Cults continued to exist in Eastern European countries that had broken with the USSR, though—most notably Ceausescu's in Romania, Tito's in Yugoslavia, and Hoxha's in Albania. No longer beholden and indeed in many cases hostile to leadership in the Soviet Union, these leaders maintained and even intensified their cults.

While the context in which these personality cults developed varies, some commonalities can be identified. Specifically, there are four aspects of cults my theory will seek to account for. The first is the extreme and unbelievable nature of the claims made about leaders. Stalin, for example was depicted as having omniscient and omnipotent qualities (Strong and Killingsworth 2011, p. 406), Hafiz al-Assad was referred to as the nation's "premier pharmacist" (Wedeen 1998), and Romanians were forced to acknowledge Ceausescu as "the genius of the Carpathians". The second is the fact that all members of society are required to participate in cult rituals and consume cult products, an observation which has been noted in the literature (Rees 2004, p.4) but not satisfactorily explained. The third is that many of the objects and rituals associated with personality cults tend to be placed or occur in the public space, from portraits or statues of the leader to mass gatherings and chants glorifying their achievements. Autocrats also take significant steps to export their cults or make them visible to the outside world. North Korea, for example, maintains a series of foreign organizations dedicated to spreading the Kim family's propaganda across the globe. For his part, Muammar Qaddafi adamantly promoted his governing philosophy (the "Third International Theory") abroad and was keen to have his work read and praised by foreign luminaries.

Fourth and finally, personality cults tend to be taken incredibly seriously by the autocrats who perpetuate them, even while leaders themselves are under no illusion as to whether the individuals singing their praises are true believers. Mao was clearly cognizant of the fact that the adulation he received was not to be mistaken as a demonstration of true loyalty. In a conversation with Ho Chi Minh, Mao explicitly advised him to beware sycophantic flatterers, saying “The more they praise you, the less you can trust them.” (Leese 2011, p. 168.) Even at the height of his cult, Stalin still feared being overthrown, indicating that he did not take the numerous pronouncements of loyalty he received from both his lieutenants and citizens as fact (Harris 2003, p. 377.) And in numerous cases across different countries, not going along with the cult or openly disagreeing with the wisdom or omniscience of the leader could be harmful to one’s career or person. Telling the most mundane joke at the expense of the leader, or even accidentally damaging a portrait or a statue of the head of the cult would draw the attention of various secret police forces and result in the denial of educational and employment opportunities, or in the limit earn one a trip to Siberia or its equivalent.

With these characteristics in mind, the cult of personality may seem to present social scientists with a quandary. Their purpose is not obvious, and at face value they may appear to be little more than vehicles to satisfy the whims of a madman who craves acceptance and servility from a captive population. However, I argue that personality cults can be explained in a more systematic—and rational—manner.

3 Some Economics of Autocracy

The position of the autocrat in most authoritarian governments is an insecure one. In many cases, autocrats are held in disdain by most of their population⁶. For common individuals, they have no say in who rules over them and are forced to toil and support the regime at great personal cost. Vanishingly few are predisposed to voluntarily give their unconditional support for the autocrat.

Though initially rare, popular revolution has been a growing threat to regimes since the 1990s (Geddes 2018, p. 26.)⁷ But popular revolution is not the only danger that autocrats face. They are under immense pressure from domestic rivals as well. Given the vast benefits that come with being in charge, coups and conspiracies are a constant threat that must always be guarded against (Tullock 1987.) Threats do not only come from inside of the regime: regime change at the hands of foreign powers is also a distinct possibility. Saddam Hussein and Muammar Qadaffi, for example, saw their rules end as a direct result of US intervention, and calls have been made for similar such intervention in Syria to topple the Assad regime. Autocrats also must worry about their commands being flouted by the “little people.” A significant issue for Stalin during his forced collectivization campaign was the crime of “wrecking”—destroying capital equipment or disregarding parts of the plan—on behalf of peasants and bandits. To address these difficulties, autocrats have two main tools at their disposal: investing in loyalty in the

⁶ Adolf Hitler, for example, was quite popular prior to and during the beginning of World War II. Joseph Stalin experienced a resurgence in popularity as well after the USSR’s victory over the Third Reich.

⁷ The reason for the rarity of popular revolution lies in the iron logic of incentives. Tullock (1971) provides the classic treatment, where he argues that given the public good aspect of revolutions we should expect to see under-provision of revolutionary behaviors. For more, see Kuran and Romero 2019.

form of plum positions or rents, or relying on brutal repression (Friedrich and Brezinski, 1965.)

Both strategies are not without their downsides. The more resources the autocrat expends on buying the loyalty of subordinates, the less they have left over to consume themselves. Even if the autocrat is willing to spend, finding the right “price” to buy the loyalty of their subordinates can be challenging if not impossible. Given these difficulties, autocrats may opt to rely more on repression. If the autocrat can raise the cost of opposing them to a high enough level, and so long as there is a non-zero probability of a potential coup failing or those who disregard the leader’s orders being caught, then any potential upstarts or disobedient citizens can be dissuaded⁸.

However, repression comes with its own difficulties. Investing heavily in repression may make it more difficult for an autocrat to elicit information from their lieutenants, as their subordinates will be aware that if the autocrat does not like what they have to say, they can be punished. Second, while investing heavily in repression may shore up the leader’s position in the short-run, it could become a potential hazard in the long-run. Whoever is placed in charge of the state’s coercive apparatus must be carefully monitored as they could potentially become a prime candidate to replace or overthrow the current autocrat (Wintrobe 1990, 1998; Haber 2008.)

⁸ Indeed, Gordon Tullock argues that we should not be surprised at all to find that very few autocracies succumb to popular revolution. So long as any ruler is not reticent to apply repression liberally, any such uprisings can be easily crushed (Tullock 1987, p. 16.)

But more important is the fact that the act of engaging in repression is costly⁹. Resources that are dedicated to secret police forces or the military are resources that the autocrat cannot use for other purposes, so they have a strong incentive to economize on how much they spend on repression. Further, autocrats have good reasons to avoid conflict. Potential conflict, even if the autocrat eventually emerges victorious, could weaken the regime and leave them vulnerable to other challengers. In the autocrat's ideal world, they would never have to bring their violent power to bear: to paraphrase Gordon Tullock, the autocrat can reduce the potential losses that come with conflict by providing suitable information to any would-be usurpers that they will most likely lose a conflict (Tullock 1974, p. 12.) Repression is costly in terms of those it harms, too. In the case of popular revolution, citizens who are injured in a revolt are ones who cannot be exploited by or produce for the regime. In this way, repression can reduce the amount of revenue the autocrat has left over to enjoy for themselves.

This costliness introduces a pressing issue for autocrats: one of credible commitment. In many cases for the autocrat, using their security forces to punish individuals or stave off any challenges may be so costly as to swamp any benefits that they receive. In these cases, the threat of violence will not be an effective one on their part: individuals will know that they can either disobey the autocrat's orders, or extract concessions from the autocrat in the case of overly ambitious lieutenants. To put it simply, as Bischof and Fink argue, autocrats face a problem committing to punishing

⁹ The idea of repression being too costly for autocrats is strongly associated with Dahl (1971.) Dahl argues that the likelihood that a government will tolerate opposition or challenges to its rule will increase as the costs of suppressing this opposition increases (Dahl 1971, p. 15.)

challengers and the disobedient (Bischof and Fink, 381.) A brief look at uprisings in various autocracies can serve to demonstrate this point. In the case of the Soviet bloc, the Hungarian Revolution of 1956 broke out because individual Hungarians no longer believed that the Hungarian regime was willing to punish acts of protest or dissent. The expectations of punishment that had once held dissidents in check had lost their bite, leading to widespread revolutionary activity until the Soviet Union stepped in to quell the unrest. The costliness of repression can also help to explain why some regimes were overthrown during the Arab Spring uprisings. In the case of Egypt's Hosni Mubarak, the costs of repression grew so high that protestors were emboldened, and he eventually had no choice but to concede power (Alimi and Meyer 2011, p. 477.) And of course, the peasants and everyday citizens could actively resist or refuse to comply with the autocrat's wishes if they believed rooting them out was too costly (Davies 1997.) For autocrats who were engaged in ambitious social engineering projects, this was not a trivial matter. During Stalin's forced collectivization drive, crimes of "wrecking"—direct disobedience of Stalin's orders or the destruction of livestock or resources—were a significant obstacle to economic transformation. Mao faced a similar problem in his own such efforts.

Thus, the autocrat finds themselves in a difficult bind. In situations where the costs outweigh the benefits, they cannot credibly commit to using force to protect their rule or make sure their orders are obeyed. Not being able to do so means that the effectiveness of the autocrat's repressive strategy is curtailed dramatically: if a key part of the way they maximize both their wealth and power is through unleashing brutal

repression, but committing to that brutal repression is difficult, then the autocrat seems to be back at square one.

3.1 Repression and Reputation

The embattled autocrat is not without potential solutions, luckily for them and unluckily for those living under them. Building on Leeson (2010), I argue that autocrats can circumvent the credible commitment problem that comes with repression by developing a reputation for being willing to punish individuals even in situations when it is costly for them to do so. In my theory, the way that an autocrat can do this is through developing and judiciously policing a cult of personality. By creating a system of obviously absurd adoration and myths around themselves and punishing those who step out of line where there seems to be little material benefit for them, the autocrat can render their threat to punish dissent and disobedience when it is costly for them credible. In this equilibrium, the reputation the autocrat has developed allows them to economize on the amount of repression that they use: the threat of violence is now believable enough to serve its purpose.

The economic theory of reputation provides several predictions that can be examined by studying the functioning of personality cults in the past and in the present. If the theory of reputation-building holds, we should expect to see the following when it comes to personality cults:

Prediction 1: *The claims in personality cults must be obviously false, disbelieved by the populace, and have little material benefit for the autocrat by themselves.*

For personality cults to help autocrats build reputations for repression, the content of the cult must be “empty”—that is, whether or not individuals go along with the cult must not be beneficial to the autocrat in the short run. Claims that are clearly untrue and are not believed by the population are a necessary precondition for the enforcement of the cult to be costly for the autocrat. Recall that the autocrat’s problem is one of *credibly committing* to using repression, *because* it is costly for them. If personality cults are not composed of rules that generate immediate costs for the autocrat when they are enforced, then they cannot be a way for the autocrat to develop an effective reputation. This leads to a second prediction:

Prediction 2: *Even the slightest failure to comply with the rules and regulations of the cult must be met with swift and harsh punishment.*

The reasoning behind this prediction is easy to understand. In order for the personality cult to help autocrats develop reputations for punishing when it is costly, actual punishments must be meted out. Personality cults which are not “enforced”—i.e., the autocrat does not impose any sanctions on those who abstain from or ridicule the cult—cannot be tools for reputation building. Further, the fact that the autocrat is responding brutally to the smallest and most absurd of slights helps to ensure that this punishment is indeed costly.

Prediction 3: *Personality cults will allow autocrats to publicize both their potential to react to the smallest insults and the punishments that accompany them.*

For the reputation to be effective, others must *know* that the autocrat has such a reputation. In Leeson's theory, pirates' reputation for brutality was propagated by allowing some members of merchant crews to survive, as well as courting newspaper coverage of their deeds (Leeson 2010, p. 507.) For personality cults to help autocrats achieve a similar outcome, a similar mechanism must be present. Given that autocrats already have control of massive state media apparatuses, this "advertisement" is relatively easier for them than it was for pirates.

Further, cults only have utility for autocrats in situations where there are threats that need to be dissuaded, or individuals who need to be kept in line. Autocrats who do not face threats, whether from outside of their borders or inside, will find cults less valuable, and thus we should not be surprised to see cults wane or totally disappear in such circumstances. Related, personality cults do not have any use in relatively more liberal societies, where close control of the population's actions is not of primary importance. These observations allow me to generate two additional predictions:

Prediction 4: *Personality cults will persist and increase in intensity where significant threats to the regime exist and when the goal of the autocrat is to closely control the actions of their subordinates and citizens.*

Prediction 5: *Personality cults will tend to fade as threats to the regime fade, and when policies of liberalization are pursued with regard to the individuals living under the regime.*

To investigate these predictions, I examine the workings and institutional details of several modern personality cults. To avoid potential selection issues, I sample from a

variety of personality cults across the globe that existed at different times and in different cultural contexts. I provide this analysis in the next section.

4 Cults in Practice

4.1 The Content of the Cults

For cults to properly function as reputation-generating devices for autocrats, the way that personality cults are organized must give autocrats ample opportunities to demonstrate that they are willing to engage in costly repression. It is here where the absurd nature of personality cults become useful to the autocrat: by creating numerous instances where the cost of punishment obviously outweighs the short-term benefits gained, the autocrat can successfully nurture their reputation.

To evaluate this prediction, I look at the functioning of personality cults across the globe and at different points in time. By selecting a broad number of cases, I aim to avoid any potential selection bias when studying personality cults. Evidence of beliefs that are absurd, incredible, and *obviously false* across personality cults at different points in time will provide support for **prediction 1** and my theory.

The most well-known modern personality cult is that of the Kim family in North Korea. In addition to the incredible abilities that were ascribed to Kim Jong-Un and were mentioned in this paper's introduction, similar accolades were heaped upon Kim Jong-Un's father (Kim Jong-Il) and grandfather (Kim Il-Sung). Kim Jong-Il was lauded by the North Korean media as a "great thinker and theoretician. a genius, endlessly benevolent, and the greatest leader of the entire century" (David-West, p. 15.) North Koreans are

taught that he was born at the foot of Mount Paektu¹⁰ and upon his birth there were great flashes of thunder and lightning, a double rainbow, and an auspicious comet streaking across the sky to welcome him (Becker 2006 p. 91.) Kim Jong-Il was awarded elaborate sobriquets like “the God of the Contemporary World”, “The Saint of All Saints”, and was hailed as a leader whose “love and trust in the popular masses are so absolute as to have no condition whatsoever and so broad as to have no limit” (Becker 2006, p. 92.) His talents extended to other areas as well. The very first time he tried his hand at golf, he was reported to have shot eleven holes in one. During the 2010 FIFA World Cup, he even relayed real-time tactical advice to the country’s football team, communicating with head coach using invisible mobile phones that Kim Jong-Il had personally invented (“North Korean Soccer Coach Talks to ‘Dear Leader’ Via Invisible Phone”)

These absurd assertions about the younger Kims may appear modest when compared to what was attributed to the founder of the North Koreans state, Kim Il-Sung. Kim Il-Sung’s skill as a theoretician was such that his works quickly superseded those of Marx, Engels, and Lenin, and only his writings were made available to party members for study (Becker 2006, p. 66.) One popular piece of propaganda published in 1963 attached supernatural powers to even the invocation of Kim Il-Sung’s words. As the story goes, the crew of a fishing vessel was caught in a terrible storm, and by gathering and reciting parts of Kim’s official biography for twenty minutes, the storm subsided (Becker 2006, p. 67.) Visiting dignitaries were required to pay their respects at shrines to the Kims, just as

¹⁰ Mount Paektu, in addition to being the supposed birthplace of Kim Il-Sung, has incredible significance in both North and South Korea. For more on the history and myths of the mountain, see Winstanley-Chesters and Ten (2016)

if they were religious figures (Becker 2006, p. 68) and citizens were encouraged to thank the leader for providing them with all that they had—even the clothes on their backs (ibid, p. 69.) The deification of Kim Il-Sung reached its apotheosis with the passage of the “Ten Principles for the Establishment of One Ideology.” These principles established Kim Il-Sung as an infallible thinker, requiring all people to accept the teachings of the Chairman without question. Such was their force that the “Ten Principles” functionally replaced the North Korean constitution, making it clear that the supreme law of the land was to submit to the Kim family and acknowledge the divine genius of the Chairman (ibid, 71.) Even in death, Kim il-Sung was openly treated as nothing less than a god, with the party declaring him to be “superior to Christ in love, superior to Buddha in benevolence, superior to Confucius in virtue and superior to Mohammed in justice” (ibid, p. 77.)

While the bizarre claims of the Kim cult are the freshest in memory, a similar pattern can be seen in other personality cults. In China, biographies of Mao described him as the “great leader, great teacher, great supreme commander and great helmsman” of the Chinese State (Walker 1972, p.161.) The ideas of Mao Zedong—commonly referred to as “Mao Zedong Thought”—were treated with the reverence and gravity of religious teachings, especially during the throes of the Cultural Revolution. Mao Zedong thought was described as “the powerful, invincible weapon of the Chinese people” (Peking review 1966, p. 14) created because of Mao’s “gifts of genius” (ibid) and Mao’s brilliance was such that that “every sentence by Chairman Mao is the truth and carries more weight than ten thousand ordinary sentences” (Peking Review 1966, p. 15.)

Mastery of Mao Zedong thought was the key to liberate the world, and finally defeat reactionaries and the bourgeoisie (Peking Review, 1966.)

The words of Mao Zedong were given an undoubtedly sacral veneer in the 1960s and touted as pieces of wisdom that could improve all aspects of peasants' lives. Mao's quotations were collected and published in the infamous "Little Red Book" under the direction of Mao's lieutenant, Lin Bao. Over 900 million copies of the book were produced, and across the country individuals in schools, workplaces, and other public spaces engaged in serious study and memorization of these quotes (Wardega 2012, p. 183.) Claims surrounding Mao also quickly entered the realm of the supernatural. A newspaper from 1970 reports that a peasant was executed on June 29th in Anking county for not showing proper deference to Mao. His "crimes" included not having enough space in his meagre home to properly hang a poster of Mao and expressing disbelief at the claim that Mao Zedong would literally live for 10,000 years (Leese 2007, p. 638.)

Such esteem was showered on Joseph Stalin at the height of his cult, and deference to the wisdom of the "Father of Nations" was required. As Strong and Killingsworth (2011) ably document, though referring to Stalin as a literal god was out of the question, deity-like attributes were commonly ascribed to him. Russian folklore performer M.S. Kriukova was typical of an arts environment that described Stalin in omniscient and omnipotent terms. Her work "Glory to Stalin Shall be Eternal" depicts Stalin as being able to "see everything with his keen gaze" and having the capability to "reward(s) everyone for their good work" (Strong and Killingsworth 2011, p. 406.) Stalin was also said to be "the friend of humanity, the great thinker, and the creator of people's

happiness (ibid, p. 407.) As Stalin's cult reached its zenith, to express doubt at his wisdom was to express doubt of the entire project of the Soviet Union—Stalin was quite literally responsible for the entire trajectory of international communism, and no other paradigms were encouraged.

Turning to cults in the non-Soviet sphere, we can see similar claims being made. Muammar Qaddafi was portrayed as a paragon of learning when it came to political philosophy, government, and even religion. One of Qaddafi's pet projects was advancing the frontiers of Islamic theology. The difficulty that came with accepting Qaddafi's genius was that his "contributions" to religious thought were of such poor quality that any believer could identify their deficiencies. Qaddafi's views of Mohammad's position in Islam bordered on the heretical, and he even attempted to place himself on somewhat equal footing with the Prophet by implausibly tying his own lineage to that of Mohammad (Pargeter 2012.)

While observing the citizens who participate in personality cults may give the impression that autocrats truly are held in the highest esteem, accounts from those same individuals living under personality cults paints a different picture. In North Korea, defectors report that individuals did not believe the incredible claims about Kim Jong-Un's marksmanship or driving ability but were afraid to openly question these claims as doing so could have severe consequences (Fifield 2019, p. 98.) In the USSR, one peasant—particularly distressed at the levels of veneration afforded to Stalin—wrote to communist officials decrying cult practices, and argued that none of the ordinary people actually felt anything approaching affection for Stalin or other Soviet leaders (Davies

1997, p. 145.) In Ceausescu's Romania, the personality cult was widely considered to be a sham, and the leader and his family were despised even as everyone paid them lip service (Tismaneanu 1989, p. 33.) In Maoist China and Syria under the Assad family, there is significant evidence to indicate that the cults were unpopular and leaders knew about this, yet promotions of the cult continued unabated (CIA Intelligence Report POLO XXXVI, 1969; Wedeen 1998 p. 506.) For most of the population, personality cults do not seem to have represented their true feelings for their rulers, but they went along all the same.

Reviewing all the paeans that were constituent of personality cults would be prohibitively time consuming. However, this section has established that the magnitude and unbelievable nature of the claims that make up cults. Further, it has shown that the “sham” nature of cults is known to the citizens who live under them. Cults do not seem to be believed by the populations who live under them, nor do they appear to be designed to be “believable” in the first place. And yet, autocrats treat their cults with deadly seriousness. The next section examines this in depth.

4.2 Policing the Cult

If cults are institutions that help autocrats overcome the credible commitment problem, it is not enough for personality cults to simply trumpet such obvious fictions. For a reputation to be developed, autocrats must diligently police the boundaries of their personality cults and “bring down the hammer” on those who do not kowtow to them. A reputation for punishment cannot be developed without actual punishment, so the theory

of repressive reputation predicts that the dictums around personality cults will have teeth about them. Evidence of punishment will support **prediction 2** of my theory.

In North Korea, consequences for disregarding the cult and disrespecting the Kim family are harsh indeed. As part of the cult, citizens are required to attend classes them guiding them in the “study” of the Kim family’s *Juche* philosophy. Attendance of and enthusiasm displayed in these sessions is carefully monitored, and officials even keep close tabs on whether North Koreans are bowing low enough before statues of the Kims (Fifield 2019, p. 112.) Those who are willing to openly refute what they are required to parrot are banished to remote concentration camps, and dissenters run the risk of having their entire families sent to the camps along with them (Fifield 2019, p. 112.) Self-criticism sessions where civilians are taught how *Juche* philosophy can help the to improve their lives are ubiquitous, and even raising doubts about the stories of the young Kim being able to fire a rifle or drive a car at such a young age could result in death sentences (Fifield 2019, p. 117.) Even the way individuals treated the ubiquitous portraits of their leaders could result in them being highly praised or punished. One factory worker who had lost his five-year-old daughter but managed to rescue his portraits of Kim Il-Sung and Kim Jong-Il during a flood was hailed as a national hero (Lankov 2013, p. 34.) During all major holidays—of which the birthdays of Kim Il-Sung and Kim Jong-Il are paramount—North Koreans are also expected to pay their respects and leave gifts at local statues of two men (Lankov 2013, p. 33.) Failure to do so can also result in punishment, or at the very least draw the suspicion of the regime’s security agents. Other icons of the Kims that North Koreans are required to keep are afforded similar care. Falling astray of

the byzantine system of rules that were designed around the maintenance of portraits of the leaders would result in severe punishment (Lankov 2013, p. 51.) Overall, North Koreans are intimately familiar with one crushing rule: the harshest of repression can be expected to be visited upon all who refuse to go along with the regime's inflexible prescriptions for behavior (Lankov 2013, p. 212.)

Punishments in North Korea are also famed for their brutality, and no member of the social strata is immune from them. Jang Song-Taek, who served as Vice Chairman of the National Defense Commission—the DPRK's counterpart to the US Department of Defense—is an instructive case. Jang enjoyed a significant amount of prestige within the Korean Worker's Party and had even married into the ruling family. Nonetheless, he was found guilty of not displaying proper respect for the new leader, Kim Jong-Un (Cha and Kim 2013.). The regime claimed that his sins included improperly displaying a granite tablet that had the words of the Supreme Leader written upon it and failing to clap hard enough during one of the ceremonies celebrating Kim Jong-Un's ascension (National Public Radio, 2013.) For these failures, Jang was tried by a special military tribunal and executed. Other notables who were accused of not abiding the cult's rules and raised the ire of the leader were Kim Yong-Jin, a vice premier within the party who was executed by firing squad for not standing upright during a meeting (*North Korea Executes Top Official, South Korea Says*, 2016), and Kim Chol, who was reported to have been caught in forbidden activities such as drinking and carousing during the official state mourning period for Kim Jong-Il. Of course, it is perhaps a certainty that these officials were removed because of the threats they posed to Kim Jong-Un. But so long as the perception

of Kim was that of an unhinged lunatic willing to punish even those who seemed most secure for the smallest of sins, the cult would be successful in meeting its aims.

The North Korean personality cult was not the only one to mandate punishments for slights against the cult. This tendency can also be seen in the cult of Saddam Hussein. Though the cult was at its most fevered pitch by the 1980s, Saddam had begun to develop his cult even before he came to power in 1979. But when his cult was implemented by the Ba'ath party, the rules and regulations built around it ranged from the quotidian to the ridiculous. For example, Saddam was almost fanatical about the way his dictums were expressed to the public. One account tells of Saddam watching a news broadcast and seeing the presenter read his commands and make some grammatical mistakes in his delivery. Saddam immediately got in touch with his minister of culture and information, and demanded a special committee be formed with the sole purpose of investigating this matter. The tapes of the broadcast were seized, and the presenter was required to accurately reread the same command two days later. His punishment for this transgression was a relatively light one: he was suspended from his work for six months (Sassoon 2011, pgs. 68-69.)

Other aspects of Saddam's cult were equally capricious and even more incomprehensible. Saddam had a habit of telling his subordinates that he was able to read their minds and could thus tell if they were with him or against him (Sassoon 2011, p. 166.) Saddam issued intense regulations about how ministers were to take care of their own hygiene and the hygiene of those below them (Sassoon 2011, p. 172.) The cult was directed to all members of Iraqi society—in 1982, Saddam required a publicly staged

loyalty pledge across the country known as the *bay'a* in which over 4 million Iraqis participated (Sassoon 2011, p. 175.) But the upper echelons of Saddam's ranks were not exempt from cult practices. Writers for the diplomatic corps were required to refer to Saddam in all their cables, and failure to do so—whether it was deliberate or accidental—was not tolerated. Writers were required to use glowing terms such as “Saddam is the Peak of the Mountains and the Roar of the Seas” or “Saddam in this country is the country” (Sassoon 2011, p. 179.) Even those most important to Saddam could be brought low by running afoul of the personality cult. A particularly harrowing account tells of one of Saddam's generals, who had served him loyally in past wars, being reported by Saddam's intelligence services for having his required portrait of Saddam resting on a table rather than hanging prominently on his wall. The general protested, explaining that he had removed the portrait from the wall to prevent it from being smashed if it were to fall during any potential air raids, but this fell on deaf ears. The general was sentenced to two years in prison, and while this was eventually reduced to one year, he was discharged from his job and then summarily demoted (Sassoon 2011, p. 181.)

The greatest indication of the care that Saddam took in policing his cult can be seen in the passing of a 1986 Revolutionary Command Council decree known as the *qanun al-tahajjum wa-al-ihana*, or “the law of assault and insult.” This decree announced that anyone who insulted the President of the Republic (Saddam), his deputy, members of the RCC, or the Ba'ath Party would be subject to life imprisonment, along with having their property confiscated. If the insult was a public one and had the end goal of “inciting public opinion against the authority”, then the penalty was upgraded to death (Sassoon

2011, p. 198.) The decree was strongly enforced. One individual who was prosecuted was found guilty of cursing the party in public when he was filling out some complex paperwork. For this violation, he was investigated by Saddam's secret police and his case was referred to a specially convened court. From all of this, one can easily see that the entire lynchpin which held the regime of Saddam Hussein together was fear of punishment. Saddam's system of oppression resulted in both true believers, opportunists, and detractors behaving outwardly in the same manner. People at all levels of Iraqi society were terrified of Saddam Hussein's reactions to "wrongs" and the ruthless efficiency of the party and security wing he had built. Endorsement of the cult was by no means universal, and some Iraqis may have managed to avoid at least spreading the cult, but any resistance that could be said to exist was powerless. The worship of Saddam was enforced in every part of Iraqi life, and escaping this reality was a virtual impossibility (Sassoon 2011, p. 190.)

Though the cult of Saddam Hussein presents a particularly vivid case of the harsh consequences that came with opposing personality cults, his regime was far from the only one that invested vast amounts of time and treasure in punishing harmless citizens who did not hold the leader in sufficient esteem. Under Hungarian dictator Matyas Rákosi's personality cult, "enemy activity" as recorded by the State Protection Authority (Hungary's secret police force, abbreviated as the "AVH") included negative remarks about the Rákosi cult. Scholars studying this area have strong reason to believe that these accounts were genuine, and not simply trumped up incidents to justify the police forces' existence (Apor 2017, p. 209.) The regime considered all sorts of mundane practices—

wearing the wrong types of clothes, listening to the wrong music, and even cracking jokes about politicians in the pub as acts of “sabotage.” Many documents exist testifying to the fact of slander against Rákosi being recorded in bars. The offending parties in these situations would often claim they had made these jests in error while inebriated, as they were aware of the harsh consequences they would face if they had spoken such blasphemy sober (Apor 2017, p. 212.) The AVH were also called in and required to investigate vandalism or destruction of the numerous portraits of Rákosi that were present in the public square (Apor 2017, p. 216.)

Legal penalties for disrespecting the Rákosi cult were outlined in “Article VII”, a statute that was ratified in March of 1946. The bill was designed to protect the Hungarian establishment from “criminal offenses”, which included expressing disapproval of Rákosi and his helpers. This bill was used to great effect and stood as a testament to the power that the Communists had over both the judiciary and the police in Hungarian society. The number of cases brought against individuals for simply expressing dissatisfaction—even those individuals who were powerless in Hungarian society—was strikingly high (Apor 2017, p. 212.) The act of even telling a bawdy joke about Rákosi, who due to his physical appearance was a relatively easy target, was enough to bring down a swift response from the secret police. These jokes were categorized by the police, and the joke tellers themselves faced legal action up to and including doing time at the Recsk concentration camp, the most notorious and brutal of Hungary’s prisons.

In the Soviet Union, would-be jesters faced equally stiff penalties for mocking the abilities or status of Joseph Stalin. Under Stalin, opposition to and disrespect of his cult

was made illegal, and verbal attacks against the leader—including japes and jests—were prosecuted as “anti-Soviet agitation” under the notorious article 58.10 of the Soviet criminal code (Davies 1997, 1998; Lauchlan 2009.) Indeed, during the failed program of forced collectivization, when Stalin and his regime saw what popularity they had plummet, the NKVD (presumably at Stalin’s behest) continued to judiciously apply Article 58.10 in punishing detractors, significantly scaling up “insubstantial” infractions and convictions (Davies 1997, p. 242.)

Further examining the Soviet case, we can see that the “crimes” people were penalized for were equally as fantastical as what passed for sedition under other personality cults. Mistakes, errors, and even sentiments shared in private were fair game for investigation and eventual incarceration. Accounts in the Soviet Union tell of the following: a peasant who threw an axe at a compatriot and hit a portrait of Stalin instead was sentenced to eight years in prison, a tailor who punctured a picture of Kaganovich in the newspaper with a pin was given ten years, a saleswoman who used newspaper with a picture of Stalin printed on it to wrap a bar of soap as accused of terrorism and faced ten years, and even those caught swearing at livestock to denounce policies like forced-collectivization could earn imprisonment (Claeys 2017, p. 148.) High officials in the party could also find themselves victims of the cult apparatus. Official slogans released by the Central Committee were required to be republished perfectly: any incorrect or unapproved formulations of these quotations would result in their promulgators being taken to task (Getty and Naumov 2010, p. 20.) Even in 1932, before the Great Terror was underway, the cult of Stalin had reached such proportions that even considering replacing

Stalin as general secretary of the party was tantamount to betrayal and treason of the state itself. In this new discourse, criticism of the party or the Central Committee was synonymous with criticism of Stalin personally (Getty and Naumov 2010, p. 80.)

Following this pattern, in Nicolae Ceausescu's Romania, individuals who were doubtful of not just the autocrat's competence, but actual *omniscience*, were publicly shamed at party gatherings and then promptly removed from the political body (Tismaneanu 1989.) Severe enough transgressions could result in the offender essentially becoming a non-person or being forced by the regime to kill themselves. These incredibly repressive penalties seem to have had the desired effect—until the very end of his rule, when outside factors had rendered the nation of Romania particularly unstable, activists were unable to mount any effective challenges to Ceausescu's rule or power. Neighboring cults—like that of Tito in Albania—made sure to follow suit in making minutiae crimes against the state. Complaining about Tito in public, or damaging images of him intentionally or unintentionally, would merit imprisonment (Bondarev 2011, p. 751.)

Most importantly for my theory is that punishment for the breaking of cult protocols was extremely costly for the autocrat. As argued previously, there seems to be little value for the autocrat in repressing individuals who refuse to proclaim unbelievable things as true about them. Other scholars have noted that the lavishness of the cults represents a mystery. From a point of view that does not consider personality cults as playing any role in securing the power of the regime, it seems irrational that autocrats would spend so much on personality cults (Overy 2006, p.172.) Again, the cult of

Saddam Hussein is instructive in this area. It was “remarkable how much time and energy was devoted to dealing with even the most casual searing at the president; investigative committees made up of representatives from the four major security agencies met to discuss any such incident and to decide whether to refer it to a special court...” (Sassoon 2011, p. 198.) And as noted in the cases of the Soviet Union and Matyas Rákosi’s Hungary, security forces were required to investigate and prosecute even japes spoken in private. Even offhand remarks that were contra the cult could result in imprisonment or death (*Even Minor Personalities Can Spawn Cults, NYTimes.*)

Again, a recounting of all the instances of punishment for trivial transgressions would be staggering. However, given the evidence I have presented from cults across the globe, a pattern of harsh penalties following the violation of absurd cult rules can be discerned, well in line with **prediction 2** of my theory.

4.3 Cults and Publicness

Lastly, to serve as institutions for developing a reputation for violence, personality cults must fulfill one final criteria. In line with **prediction 3**, the unbelievable claims made by personality cults and the punishments that follow deviations must be in the public view. The publicization of cult beliefs and practices informed citizens of the claims they were expected to believe as well as what the costs of resistance were. Evidence that attests to this “public” element will help to support to support **prediction 3**.

The extent to which the claims of the cult were publicized and broadcast to the population at large is the easiest to verify. Previous material in this paper has attested to the fact that mass gatherings and spectacles were one of the pillars that personality cults

were built on. The beginning of Joseph Stalin's personality cult coincided with a massive celebration of his 50th birthday in 1929 (Tucker 1979, p. 349.) The magnitude of this celebration was only dwarfed by that of his 70th birthday celebration, in which Stalin was presented with gifts from all across the globe, and children were encouraged to thank Stalin for granting them everything good they had ever experienced in their childhoods (Kelly 2004, p.113-114.) Ceausescu insisted upon receiving endless applause whenever he entered the political chambers of Romania's legislative assembly (Tismaneanu, 2003.) Iconography of the leaders, broadcasting their heroic and godlike characteristics pervade countries where personality cults are ascendant as well. The ever-present portraits of the Kim family are one such example. North Koreans are required to have no less than three portraits hanging in their homes, one for each leader of the Kim regime (Lankov 2015.) North Korea itself is full of statues of the Kims, the largest of which is estimated to have cost around \$800 million, USD (Becker 2006, p. 70.) Both citizens and foreign dignitaries were required to pay their respects before such statues, in full view of North Korean society and the world (Becker 2006, p. 68.)

Such idol worship pales in comparison to one of the most public and well-known aspects of the North Korean personality cult: the *Arirang Festival*. The high point of the Arirang Festival is an unparalleled mass gymnastics display, with over 100,000 performers taking part in dances, laser light shows, and other physical feats (Jung 2013, p. 99.) Unsurprisingly, central to this performance are the paternal Kim figures, Kim Il-Sung and Kim Jong-Il. Hymns are sung praising the exploits of the both men, and the entire event is geared towards highlighting the relationship between the god-like Kims

and the rest of the population. In addition to being the most public annual event in North Korea, those who underperform are singled out and either physically punished or forced to undergo severe sessions of ideological education (Jung 2013, pgs. 111-112.) These failures are carefully monitored by other “units” of performers who take place in the games and falling to meet the high standards of performance dictated means that performers in your unit will be punished as well. Errors in the games were not just attributed to physical shortcomings. A lack of skill or dedication to the games is equivalent to a lack of respect and belief in the North Korean state project and are dealt with accordingly (Jung 2013, p. 111-112.)

Public “performances” of another sort are required in the daily lives of North Koreans. Every citizen—regardless of their social standing—is required to attend self-criticism meetings at least once a week, and sometimes more frequently (Fifield 2019, p. 116.) In these sessions, North Koreans must discuss their own ideological failings, how application of the wisdom of the Kims will help them correct their mistakes, and provide similar criticisms for their fellows. Other “educational” sessions are compulsory as well, and citizens must memorize Juche principles, including such pearls of wisdom as “highly revering the Great Leader Comrade Kim Il Sung is the noblest duty of the revolutionary warriors who are endlessly loyal to the great leader”, and be able to recite them back perfectly when commanded (Fifield 2019, p. 115.) North Koreans are all members of an *inminban*, functionally a neighborhood watch group of approximately 30 households, that is tasked with monitoring the behavior and habits of individuals. The smallest actions,

like eating suspiciously too much meat, are grounds for police investigation and public humiliation in punishing public self-criticism sessions (Fifield 2019, p. 122-123.)

Open displays of loyalty and devotion to the Kims are especially required during transitional periods in the regime. Upon the death of Kim Il-Sung in 1994, the entire country was cast into a period of national mourning. Photographs and videos of despondent officials and everyday people flooded the media. However, these displays of grief were also carefully orchestrated. Hwang Jang-Yop, to this date the highest ranking official to defect from North Korea and one of the primary architects of the *Juche* system, testified that mourners were carefully monitored by the party to ensure they were displaying the right amount of grief (Yop 2002.) Surveys were taken by the party, and the magnitude of grief was used to make important decisions like who was to be promoted. Similar monitoring was implemented during the state funeral of Kim Jong-Il. Those who were judged to have not mourned enough or to have transgressed in other ways during the funeral period were reportedly given minimum sentences of six months hard labor in the hermit kingdom's barbaric prison camps (*Harsh Punishments for Poor Mourning*, 2012.)

Humiliating rituals for dissidents were also prevalent in both the Soviet sphere and Maoist China. Chinese civilians who were not in accordance with Mao Zedong thought were commonly subjected to brutal struggle sessions, where they were required to admit their faults and the way they would work to better improve their understanding of Mao's thought. Rákosi, echoing Stalin, frequently used show trials to broadcast the punishment and humiliation of his opponents (Apor 2017, p. 212.) And as we will see in

the next section, one of the major goals of personality cults was to make sure that they could be viewed by those outside of the countries as well—without the cults being prominent and public, they could not fulfill this function.

Public executions are nothing new to totalitarian regimes, but many cult leaders seem to have taken this to the next level. Muammar Qaddafi was particularly fond of televising the executions and humiliations of those who doubted his abilities. Recall the story of the senior cleric who gently challenged Qaddafi's almost laughably bad attempt at Islamic theology (Pargeter 2012.) For his troubles, he was broadcast on television recanting his previous statements. Then, in an act of utter humiliation, Qaddafi's guards shaved his beard off on live television. This was nothing more than a light slap on the wrist compared to what awaited student protestors who objected to the prominence given to Qaddafi's cult philosophy, a particularly unworkable theory of government known as "Jamahiriya." They were tortured and then brutally executed on live television, which was broadcast to the entire country.

As has been discussed in section 4.2, the North Korean state has perfected the public execution. Top officials are often disposed of in unimaginably grotesque ways for the most trivial of missteps. No matter the ostensible reasons, the executions are clearly broadcast and communicated to the rest of the country and the world, leaving no questions about what potentially awaits those who push back against the personality cult.

The publicness of the cult practices and the punishments that came along with them allowed autocrats to broadcast to their citizens what the rules were and their willingness to enforce these rules when citizens broke them. Further, the absurd claims of

the cults and the minutiae that could warrant repression was such that citizens could see that autocrats would engage in punishments even when it was costly for them. Without the public nature of the cults, citizens would not be aware of the lengths autocrats would go to and the costs they would incur to enforce their cults. By making these practices visible and extravagant, autocrats were able to complete the process of building their harrowing reputations, in line with **prediction 3** of my theory.

4.4 Dynamics of Personality Cults

Modern personality cults are not just meant to be viewed by individuals within the regime, though. Significant resources are dedicated to projecting cult images and information to countries outside the reach of the autocrat. The Korean Central News Agency, which serves as the primary mouthpiece of the regime, maintains a public facing website which carries stories about events in the hermit kingdom. The KCNA has also carried some of the most bombastic and laughable pieces of North Korean propaganda, broadcasting such claims about Kim Jong-Un's miraculous child exploits, medical cure-alls, and providing photographs of North Korean citizens participating in "loyalty ceremonies" to glorify the leader (<http://kcna.kp/>). A government supported organization, the Korean Friendship Association, was created in 2000 and boasts branches in countries like the United Kingdom, Portugal, Italy, and the United States. The KFA maintains the DPRK's official webpage (<https://www.korea-dpr.com/index.html>), which contains "useful" resources on the history of the DPRK, as well as providing free links to download works by all members of the Kim family, such as "The Worker's Party of Korea is the party of the great leader comrade Kim Il Sung", "Kim Jong-Il, Brief

History”, and “On Having a Correct Viewpoint and the Understanding of the Juche Philosophy” (https://www.korea-dpr.com/e_library.html). The DPRK is also quite amenable to having foreigners travel to and tour the country, accompanied by diligent minders to make sure that only approved sights are seen.

Viewed from the perspective of indoctrination or legitimacy, expending precious resources on such enterprises may be curious. Outside observers are well-positioned to check North Korean claims as they largely have unrestricted access to the internet and other historical resources. While a few foreigners seem to embrace organizations like the Korean Friends Association with gusto, North Korean press releases and organizations are largely treated as objects of curiosity or humor. Elites in these countries are even less likely to be convinced. Would policymakers in the United States seriously change their attitudes to the Kim family because they had become convinced that the Kims merited worship? What could explain such attempts on the behalf of the regime?

One of the key things that comes across through such broadcasts is the irrational and erratic nature of the DPRK, particularly its leaders. Roy (1994) draws attention to this fact—as he recounts, much written on the Kim regime highlighted the inscrutable, unrealistic, and logic-defying impressions that that regime gives off. Personality cults, with their false claims and lack of internal coherence, contribute to these ideas. The impression given is that of a country on the brink, ruled by a capricious madman who could respond in unexpected ways. Outside observers may expect the DPRK to back down in international conflict—their military, particularly prior to North Korea’s acquisition of a nuclear bomb, may be large, but the equipment at their disposal is

increasingly obsolete when compared to that of their two main rivals: South Korea and the United States. However, one can never rule out the possibility of suicidal war (Roy 1994, p. 311.) North Korea still maintains massive artillery batteries close to the border with South Korea, and estimates indicate that over 300,000 South Korean citizens would perish in the first few days of fighting, with North Korean artillery being capable of firing up to 10,000 rounds per minute into Seoul (McInnis, et. al 2017.)

In his analysis of international conflict, Schelling (1966) argues that uncertainty can be a powerful tool when it comes to international relations and diplomacy. In a world without uncertainty, threats of war, retaliation, or resistance would not be credible. However, responses or threats that carry some risk of war can still be plausible, even if the resulting war will clearly end in defeat for the weaker side. Any side that can project some amount of uncertainty or of things getting out of hand can have an advantage when it comes to negotiations or conflict, even if violence would be “unreasonable” for all parties involved.

Internationally projected personality cults can help to cultivate such reputations for autocrats. If there is any potential that the leader you are negotiating with could misstep or buys into even a fraction of their superhuman prowess, considerable uncertainty can be introduced into the equation. In this formulation, the more over-the-top and unbelievable the personality cult is, the more foreign powers may question the state of mind of the person who is in charge. Even if the mental state of the autocrat is not brought into question, the erratic nature of personality cult dictums and policies can help autocrats cultivate reputations for uncertainty. North Korea’s blustery responses to

foreign criticism can be seen as examples of this. Personality cults may also have a secondary function as well. In a vein like Huang (2015), the public nature of personality cults can also signal the control that the autocrat has over their population. If the population has more to fear from the dictator than outside forces, they may potentially be co-opted into a reluctant defense of the regime, further raising the magnitude of potential costs.

If such reasoning is at play, a simple prediction follows: one would expect to see personality cults wax and wane in response to existential threats from inside and outside of the country. This can be seen in **prediction 4** and **prediction 5** of my theory. The case of the Kim family cult seems to follow this pattern well: the cult of Kim Il-Sung began to grow during the Korean War, and has been maintained, renewed, and strengthened with each subsequent generation. Public displays of the cult are also most common during transitional periods when the regime may be at its weakest, and these displays are carefully orchestrated, monitored, and then broadcast to the outside world. As Yop (2002) has told, North Korean citizens were required to attend the state funerals of Kim Il-Sung and Kim Jong-Il. Those who did not exhibit what was determined to be the proper levels of grief were subjected to harsh punishments. Conformity, and an outward face of unity, was the main goal.

Such dynamics are not just visible in North Korea. After the allied victory in World War II, Europe was carved up into different spheres of influence. Western Europe and Western Berlin were under control of the liberal democratic countries, while Eastern Europe and East Berlin were under the thumb of the USSR. While structural features of

the liberal democratic nations prevented the emergence of personality cults, they became ubiquitous in communist nations. The formation of personality cults was directly encouraged by the Soviet Union, with cults emerging in Romania (Tismaneanu 1989, 2003), Albania (Fevziu 2016; Sretenovic and Puto 2004), Hungary (Apor 2004; 2017), Poland (Main 2004), and Bulgaria (Larson 1968.) While stopping short of the types of claims made in North Korea, and certainly subordinate to Stalin, all glorified their various heads of state in ways that stretch credulity. Matyas Rákosi of Hungary was portrayed as the kindly benefactor of all Hungarians, for example, and the recognition of the genius of Ceausescu was a matter of state policy.

4.5 Hasta la Vista, Stalin! The Rise and Fall of Personality Cults

My theory would predict that in regimes where repression is less important, cults will also be less useful (**prediction 5.**) To study this prediction, I look at the fall of the two most prominent personality cults in the communist world: the cults of Stalin and Mao. Evidence that the cults were wound down in conjunction with changes in perceived threats to the regime or when relatively more repressive policies are no longer required will render support for this prediction.

Upon Stalin's passing, the USSR entered a period of "collective leadership." A temporary troika of Lavrentiy Beria, Vyacheslav Molotov, and Georgy Malenkov took over the running of the party and the country after the Father of Peoples' death. Quick maneuvering soon left only Malenkov and the First Secretary of the CCP, Nikita Khrushchev on the playing field. Soon after, Khrushchev was able to win total control,

though he was never able to exert the sort of influence and wield the amount of unchallenged power that Stalin could.

Though the Cold War would continue until the fall of the USSR, Khrushchev's tenure represented a tonal shift for the USSR, both with regards to domestic and foreign policy. Soviet life began to gradually liberalize, and while the CCP still exercised considerable power, censorship receded, and free expression became more acceptable. Economic and educational reforms were implemented, providing a modicum of breathing room for citizens in the USSR. Khrushchev would also have a significant effect on US/Soviet relations, pursuing a policy of what was to be termed "peaceful coexistence" between the United States and the USSR (Windt, 1959.) This attitude envisioned a more congenial relationship between communist and capitalist nations, instead of promoting the vision of the two diametrically economic and political systems being locked in mortal peril.¹¹ Overall, Khrushchev sought to better integrate the USSR into the world economy.

With these goals in mind, a new strategy needed to be adopted. In a world where the goal is no longer to open antagonize and ratchet up tensions with other foreign powers, **prediction 5** indicates that personality cults would no longer be desirable institutions to maintain. Further, if the goal is to usher in some measure of political liberalization, no matter how small, reducing the size of the cult would also be effective,

¹¹ Though initially promising, "peaceful coexistence" was not to last. The Cold War still simmered in the back ground, and many events—the Cuban Missile Crisis not the least of them—lead to tensions once again being ratcheted back up. Khrushchev does not seem to have developed a personality cult of his own, though at the end of his time in power his successor, Leonid Brezhnev, accused him of developing one. For his part, Mao Zedong saw Khrushchev's lack of a personality cult as one of the reasons why he was able to be purged. Many aspects of the thaw were ultimately undone by Brezhnev, but he still continued a policy of detente with the western world. Near the end of his life, Brezhnev began to grow a personality cult around himself.

as can also be seen in **prediction 5**. Therefore, if Khrushchev sought to cool things down both inside the USSR and with regard to its relations to the rest of the world, the way that Khrushchev denounced and dismantled the cult of Stalin in his 1956 “Secret Speech” would be rational and fits with my theory of personality cults.

Khrushchev’s virulent denunciation of Comrade Stalin seemed to have been completely unexpected by the rest of Eastern Europe. Khrushchev and his allies had recognized that his critique had the potential to be destabilizing and thus sought to keep it “secret”, but a transcript of the speech was obtained and leaked by the CIA. Soon after, cheap copies of the speech could be purchased in marketplaces across Eastern Europe (Mayzel 2013.) Two of the major uprisings in 1956—the Hungarian Revolution of 1956 and the Poznan protests in the same year—were a direct result of Khrushchev’s criticisms leaking (Apor 2007; Kemp-Welch, 1996.) In both countries, political prisoners were released, and security apparatuses curtailed. Importantly, though, individuals in those countries no longer feared criticizing their governments. Matyas Rákosi, who had previously declared himself “Stalin’s most faithful disciple” was ousted from power and citizens soon revolted in masse. It ultimately took direct intervention by the USSR itself to quell the rebellion. My theory can account for this unrest once the personality cult had been dispensed with. With the personality cult no longer taken seriously, the threats behind it no longer held any credibility. Consequently, the resistance and protest across Eastern Europe becomes understandable.

Not all members of the Communist world approved of Khrushchev’s changes. His policy lead to the eventual breakdown in relations between the USSR and the other great

communist power at the time, Maoist China (Luthi 2008.) While the initial denunciation of the personality cult caused Mao Zedong to initially restrict his own massive cult, he quickly found a way out of the bind. Mao declared that there were two kinds of personality cults: those that were “true” and those that were “false.” False cults, of course, should not be promoted, but “true” ones, like that of Mao, were imperative and must be promoted (Leese 2009.) Mao’s strategy, it must be noted, was still to oppose anything that looked like peaceful coexistence with the capitalist world.¹² For Mao, the capitalist world was still perceived as a threat, and in line with **prediction 4**, we should not be surprised to see Mao refuse to abandon the personality cult.

China was not the only nation to part ways with the USSR over Khrushchev’s Thaw and de-Stalinization. Romania and Albania, under the control of Gheorghe Gheorghiu-Dej and Enver Hoxha respectively, also struck out on their own and asserted their independence from the USSR. Gheorghe Gheorghiu-Dej’s successor, Nicolae Ceausescu, continued this policy and further distanced Romania from the USSR. For his part, Enver Hoxha decisively broke from the Soviet Union and quickly acted to secure Albania from invasion. Fearing attacks from not only the remaining members of the Warsaw Pact, Hoxha lived in existential fear of intervention from NATO and his long-time rival in neighboring Yugoslavia, Josip Broz Tito. With both nations now isolated from any major world powers, both felt increasingly vulnerable. Given the pressure that

¹² Mao did begrudgingly accept a lucrative trade agreement with the United States in 1972, a position seemingly at odds with his hostility towards capitalist nations.

these regimes felt, **prediction 4** of my theory is supported by the fact that their cults remained intact and indeed were strengthened.

The drama behind Khrushchev's Thaw and demonization of the cult of personality would play itself out again in initially recalcitrant China. Mao Zedong died in 1976 and was succeeded by Maoist hardliner Hua Guofeng. Hua's rule was not to last, however, and he only managed to keep his grip on power until 1978, when he was replaced by Deng Xiaoping.

Deng pursued a similar strategy to Khrushchev, eschewing Mao's open hostility to the capitalist world and engaging in a series of policies that lead to economic liberalization and better relations with the capitalist world (Baum 1996; Vogel 2011.) As with Khrushchev, a strategy of hostility and deterrence no longer suited the end goals of the paramount leader. Rather than a reputation for madness, a steadier presentation to the world would be necessary. The cult was therefore abandoned, and Mao was increasingly marginalized and de-emphasized. And like Khrushchev, Deng sought to lessen the amount of repression that was present within China as well. Intellectuals and writers were told to "liberate their thought" (Link 1987, p. 127) and they were notified that there was to be a lack of "cudgeling, labeling, or harassing" regarding their works and thoughts. Deng's actions, like Khrushchev's, are once again consistent with my theory of personality cults and provide empirical support for **prediction 5** of my theory: when there is less of a need to cow citizens, subordinates, and foreign threats then personality cults become less valuable, and we should not be surprised to see them abandoned.

In this section, I have shown that my theory of personality cults can plausibly account for the decline of the two major communist leader cults of the 20th century. For the respective successors of Stalin and Mao—Khrushchev and ultimately Deng Xiaoping—the strategy shifted from one of antagonism with regards to the capitalist world to one of relative tolerance and openness. The screws were loosened at home as well, and while neither China nor the USSR were oases of free thought, a policy of relative liberalization was pursued in both countries. A reputation for irrationality, insanity, and unpredictability would no longer be suitable—in fact, it would be a hindrance. Their public discarding of those reputations symbolized a change in policy and helped them credibly commit to not using techniques similar to those of Stalin and Mao. By making the personality cult an institution to be criticized rather than nurtured, Khrushchev and Deng gave their opponents a way to coordinate around their ouster if they relied on similar tactics. Thus, the destruction of the personality cult both served to signal to outside powers that both nations were indeed pursuing new strategies, and to credibly convince their subordinates that the levels of repression would fall and stay low.

I have also shown how my theory can account for the behavior of autocrats who decided not to adopt a more conciliatory attitude towards the west, or to reduce their levels of repression. For leaders like Enver Hoxha, Nicolae Ceausescu, and later Josip Broz Tito, their explicit goal was to remain in opposition to not only capitalist nations, but also to maintain their independence from the USSR. For these three leaders, personality cults—in helping them cultivate reputations for both brutality and near insanity—were still institutions of immense value. We should not be surprised to see that

all three not only kept their cults but grew them to a size which had yet to be seen before in those nations. And the rulers of nations like North Korea, who still fear the toppling of their regimes, will double-down on such practices. The deployment of personality cults remained the rational course of action given the incentives and constraints these leaders faced, and the goals they had.

5 Conclusions

If there is anything that long-lived autocrats obviously excel at, it is maintaining power. My study of personality cults has used some relatively basic tools to explain some of the key features of personality cults, as well as why many of the major ones seemed to wax and wane over time. This leads to several conclusions.

First, though they may seem like bizarre and even humorous artifacts of the past, personality cults are taken deadly seriously by their promoters. Further, autocrats are rarely totally unhinged invalids who have lucked their way into power. As Tullock (1987) remarks, many autocrats have obtained their position by “climbing the greasy pole.” The tools used by autocrats—even the bizarre ones—are at their heart carefully considered strategies to help them maximize their chances of maintaining their position as well as having those unfortunate enough to live under them respond to their every command. At the end of the day, we should not treat autocrats or the systems of veneration they build around themselves as laughing matters.

Second, understanding personality cults and other unexplored political institutions of authoritarian states may have increased relevance if political trends of the 21st century continue apace. In different parts of the world, liberal democratic regimes seem to be in

retreat. Relatively young and new leaders with distinctive autocratic inclinations—such as Hungary’s Viktor Orban, Russia’s Vladimir Putin, the Philippines’ Rodrigo Duterte, and Brazil’s Jair Bolsonaro to name some—may potentially be developing nascent personality cults about them. Continued careful study of these institutions and the environments in what they arise may help us predict what is to come and aid us in formulating appropriate plans of action in response.

Finally, to reiterate a point made by George Stigler, my study shows how rational choice analysis can help us see the logic behind persistent or ubiquitous institutions. Personality cults are not just a one-off phenomenon developed by this or that dictator. Though they may have fallen in number over the past decades, dictators of all geographic locations and ideological persuasions—from hardline communists like Mao to military dictators like Qaddafi or Hussein—have built and nurtured personality cults around themselves. This by itself conveys information: there must be something about personality cults that helps autocrats achieve their goals, or else they would not spend so much time and so many resources maintaining them. There is still much we can learn about institutions of governance—even in non-democratic societies—by following the logic of rational choice theory. Even in apparent madness, there is a method to be found.

CHAPTER 2—REGULATING QUACK MEDICINE

1 Introduction

Before 1850, English law permitted anyone to brew any concoction they liked and sell it as medicine to anyone who liked to buy it.¹³ When such concoctions were prepackaged, marketed commercially, and brewed from “secret recipes” that often contained opium, chloroform, strychnine or other powerful drugs, they were called quack medicines. The laissez-faire marketplace in which they were bought and sold has been called “medical anarchy” (Johns 2009, p. 108).

In the late nineteenth century, that marketplace was repressed by legislation and associated judicial rulings that restricted the sale of scheduled “poisons” to licensed doctors and pharmacists. Today, that regulation is heralded as a landmark of public health policy. We argue that it’s instead a landmark of medicinal rent-seeking.

We develop a theory of quack medicine regulation in Victorian England according to which health professionals faced growing competition from close substitutes: quack medicine vendors. To protect their rents, health professionals organized, lobbied, and won laws granting them a monopoly over the sale of powerful drugs and medicines that contained them, most notably, quack medicines. Our theory explains key features of the regulation that public interest theory does not.

¹³ However, under the Medicine Stamp Act, the seller had to pay a tax: an annual fee and an ad valorem duty on the medicine. See Stebbings (2013).

Our analysis contributes to the study of the predatory state broadly (see, e.g., Brennan and Buchanan 1980; Vahabi 2016) and regulatory capture narrowly (see, e.g., Stigler 1971; Tollison 1991). Those literatures aren't linked often, but they should be. Predatory government may be “active”, such as when the state suppresses political competitors or expropriates citizens' property. More common in the Western world, however, predatory government may also be “passive”, the state serving as a vehicle for private parties' designs on one another—the suppression of their marketplace competitors or diversion of fellow citizens' incomes to themselves.¹⁴ Food, drug, and health regulation has proved fertile ground for passive state predation (see, e.g., Temin 1979; High and Coppin 1988; Kamath 1989; Tollison and Wagner 1991; Libecap 1992; Shughart 1997; Thomas and Leeson 2012; Poe-Imans et al. 2018). We examine a manifestation of the phenomenon previously neglected by economists: the regulation of quack medicine in Victorian England.

2 Medicine in nineteenth-century England

Professional healthcare in early modern England had three divisions: university-educated physicians, who diagnosed patients and prescribed treatments; apprentice-trained surgeons, who treated “external” conditions, for instance dressing wounds and setting bones; and apprentice-trained apothecaries, who compounded and dispensed physician-prescribed medicines.

¹⁴ The relationship between active versus passive state predation and “state capacity” depends on what, precisely, is meant by “state capacity”—a troublesome term used in various ways, including in the literature on “state capacity.” For a critical review of that literature, see Piano (2019).

In theory, the prerogatives of each division were defended by the College of Physicians, the Surgeons Company, and the Society of Apothecaries.¹⁵ In practice, maintaining the divisions was problematic. Outside London, where populations were thin, a single person unavoidably served as physician-surgeon-apothecary rolled into one. Inside London, apothecaries routinely prescribed to their shop patrons and, from 1704, they were permitted to do so legally, nearly erasing the distinction between their practice and that of physicians.

In the eighteenth century, divisional erosion led increasingly to the appearance of the “surgeon-apothecary”, and in the nineteenth century, to the now familiar “general practitioner”. The physician persisted but became more of a consultant, called on when the general practitioner was at a loss. The surgeon persisted too but now specialized in performing operations when the general practitioner wasn’t up to the task. The apothecary virtually vanished in all but name, having become the general practitioner. Those three—physician, surgeon, and most important, general practitioner—were nineteenth-century England’s professional doctors. After 1858, a “legally qualified” doctor required a license, which he obtained by passing an exam administered by the General Medical Council, “the parliamentary sanctioned official watchdog of medicine”, whose “members came mainly from within the profession” (Porter 1995, p. 49).

Apothecaries’ transition from dispensing medicine to practicing it created an opening in the healthcare market. Doctors could and often did dispense their own medicines, but the demand for shopkeepers who specialized in drugs and filling

¹⁵ The Surgeons Company formerly was the Barber Surgeons Company and later the College of Surgeons.

prescriptions remained. It was satisfied by the chemist and druggist. Mere tradesmen in the eighteenth century, “Chemists and druggists were one of the few medical groups to emerge during the nineteenth century who could lay claim to some form of professional standing”: pharmacists (Marland 2006, p. 82). The other group comprised doctors, whom pharmacists joined as the second pillar of professional healthcare. After 1868, anyone calling himself “pharmacist”, “chemist and druggist”, or the like required a license, which he obtained by passing an exam administered by the Pharmaceutical Society of Great Britain, the chief professional organization of English pharmacists.¹⁶

Nineteenth-century English healthcare was professionalized. But it was not advanced. With few exceptions, health professionals knew neither what caused sickness nor how to treat it properly. How could they? The germ theory of disease wasn’t articulated until the mid-1870s. English medical opinion about that theory remained unsettled for another 20 years. And viruses weren’t discovered until 1892.

Instead, illnesses were defined by their symptoms, and therapeutics were directed at reducing them. Ideas among health professionals varied, but the general approach was to induce the patient to it “excrete it out”, “vomit it out” or “sweat it out”, to “vivify his system” or lower it, “correcting imbalance” (Bynum 1994, p. 18). If that sounds reminiscent of the Ancient’s humoral thinking, that’s because it is. In many ways, disease theory in nineteenth-century England had not progressed far beyond its state in the Age

¹⁶ Registered pharmacists acquired exclusive right to use the title “pharmaceutical chemist” in 1852. They acquired exclusive right to use an encompassing list of related of titles in 1868.

of Pericles.¹⁷ Medicaments therefore were dominated by purgatives, emetics, and sudorifics, stimulants and depressants—in other words, symptom suppressants and palliatives.¹⁸ Many were dangerous: “some of the drugs in constant use” included “arsenic, prussic acid, strychnine, all poisonous vegetable alkaloids and their salts, aconite, corrosive sublimate, belladonna, and cantharides. Every one of these drugs entered into the prescriptions of physicians” (Pharmacy and Poison Laws 1892, p. 115).

But none more often than opium. “The professional journals were replete with articles expounding the virtues of opium, and suggesting its employment for almost every known disease” from coughing to cholera (Lomax 1973, pp. 167–168). “Opium was” not only “widely prescribed by doctors” (Anderson 2006, p. 108). It also took pride of place in the medicinal arsenal of pharmacists: “One of the best illustrations of the involvement of chemists in the retail of drugs directly to the public was the massive over-the-counter sale of opium preparations” (Marland 2006, p. 94).

Yet neither doctor nor pharmacist was needed to procure opium—or any other drug for that matter. Powerful drugs and medicines that contained them could be purchased from innumerable retailers who were not health professionals: quack medicine vendors. Quack medicines were prepackaged medicines, marketed commercially and distributed for retail to shopkeepers. Quack medicine vendors were shopkeepers who retailed such medicines but whose primary business was non-medicinal: “stationers,

¹⁷ This is not to trivialize the stethoscope, anesthesia, sterilization, or x-rays, each of which was invented/discovered in the nineteenth century (see Bynum 1994). But they did not particularly advance disease theory or therapeutics. Smallpox inoculation, discovered in the late eighteenth century, is an important exception.

¹⁸ Bloodletting, whose therapeutic popularity waned over time, also was still used occasionally in the late nineteenth century.

newspaper proprietors, grocers, butchers, hairdressers and publicans, to name but a few” (Marland 2006, p. 99). They sold medicaments as a sideline, which was easy to do since lumps of opium and quack medicines were ready to go “off the shelf”, no preparation required.

Quack medicines had two politer names—“proprietary medicines” and “nostrums”— and one misleading one: “patent medicines”. Misleading because few actually were patented (Mackintosh 2018). Patenting a medicine required disclosing the particulars of its composition and manufacture, which “patent medicine” producers, fearful their special blends might be appropriated, were reluctant to do. Instead of seeking letters patent, most relied on trade secrecy to protect their intellectual property rights, just as Coca-Cola—first offered as a “patent medicine” containing coca-leaf extract, incidentally—does today.

Health professionals used the “secret” composition of patent medicines to charge them with quackery. In truth, just as the basic ingredients of Coca-Cola are well known, so were those of popular quack medicines. “Many were ultimately incorporated into the official pharmacopoeia, as was, for example, Daffy’s ‘Elixir Salutis’”, whose key ingredients also were printed in home-remedy recipe books (Burnby 1997, p. 47).

Quack medicines’ “composition closely resembled that of the official preparations used by the regular practitioners” (Brown 1987, p. 217). In particular, “They shared the same active ingredients such as opium” (Holloway 1991, p. 56). Thus, alongside quack medicine vendors, health professionals also traded in quack medicines—despite denouncing their quackery. “Victorian chemists’ and druggists’ shops were crammed

with a profusion of proprietary pills, powders, and potions” (Porter 1989, p. 228). And “doctors themselves often prescribed patent and proprietary medicines” (Porter 1989, p. 141). Why not? Mixed by a pharmacist, dispensed by a doctor, or as was increasingly the case in the nineteenth century, got off a grocer’s shelf in a bottle branded “W. Sutton and Co.’s Original Bate- man’s Drops”, a tincture of opium was an opium tincture all the same.

3 A Rent-Seeking Theory of Quack Medicine Regulation

Our theory of quack medicine regulation in Victorian England is based on a simple but crucial observation: the less that health professionals understand about sickness and therapeutics, the less difference it makes to the sick whether professionals treat them or they treat themselves. When medical understanding is very limited, the range of potentially useful medicaments is too. So are differences of opinion between laymen and experts about the appropriate medicaments to use, the former’s ideas about what relieves pain and sup- presses symptoms being about as good as the latter’s.

Consider England in the nineteenth century. “Opium was one of the few effective therapeutic agents then available” (Lomax 1973, p. 167). It was considered appropriate for treating nearly every sickness by doctors, pharmacists, and laymen alike. And the particular preparation mattered little to its therapeutic effect. Opium is an extreme example, but the situation was similar for other powerful drugs used in nineteenth-century English medicine. As a result, “what the doctor ordered often differed little from what common sense dictated” (Porter 1995, p. 62). And widespread availability of what he would order often meant that healthcare could be had without going to him or the

pharmacist. “Ordinary people thought, with good reason, that they could understand illness and treat it just as effectively” (Holloway 1991, p. 57).

The implication for nineteenth-century English health professionals was straightforward: the grocer was a close substitute for their services—and so was the butcher, the Chandler, the cobbler, the draper, the whole litany of shopkeepers who were not health professionals but sold drugs like opium and medicines that contained them. Quack medicine vendors weren’t perfect substitutes for doctors and pharmacists, of course. The Chandler didn’t give smallpox inoculations. The butcher couldn’t perform operations. And the draper’s medicament section wouldn’t run very deep. Still, for less specialized healthcare needs, the health professional’s expertise added little value and the grocer would do just fine.

In other words, quack medicine vendors threatened health professionals’ rents. “If every miserable grocer, every contriver of a quack nostrum, or any common artisan who can read and write, and buy a few pots and bottles and rent a shop, may legally practice Pharmacy”, one health professional complained, “many will follow that art for the barest living; and... they will succeed. The educated classes of the Pharmaceutical profession are thus grievously injured” (Pharmaceutical Journal and Transactions 1855, p. 309).

As the nineteenth century advanced, so did the injury’s grievousness. “The period of rapid expansion” for quack medicine sales and retailers “was during the second half of the nineteenth century” (Anderson 2006, p. 125). Between 1850 and 1900, the former increased eight-fold, and between 1874 and 1895, the number of retailers offering quack

medicines climbed from 12,000 to 20,000 (Marland 2006, p. 102; Berridge and Edwards 1987, p. 125).

Intensified competition from quack medicine vendors had several causes. “The ‘retailing revolution’ of the nineteenth century” saw an explosion of retailing in general, including medicines (Marland 2006, p. 102). In 1875, the government reduced the annual duty it charged sellers of quack medicines. Also “During the 1870s, a number of limited companies, including...leading department stores such as Harrods, had started selling drugs and medicines” (Anderson 2006, p. 126). They bought quack medicines in bulk at a discount and passed the savings on to consumers, which independent doctors and pharmacists couldn’t afford to do. The result “was a great deal of competition from grocers, the emergent multiple drug stores...and many other retail outlets.... All over the country, companies were cutting the price of proprietary medicines” (Horman et al. 2007, p. 6).

The plague of competition from quack medicine vendors had an obvious antidote: monopolize the sale of powerful medicaments used for self-treatment, most importantly, quack medicines. Requiring consumers to go through doctors and pharmacists to get those medicaments would return the imperiled segment of the healthcare market to health professionals, and with it, their rents.¹⁹ There were, however, two difficulties. One was how to create and maintain a monopoly when so many quack medicine vendors

¹⁹ Our theory of health-professional rents turns the conventional theory on its head. In the latter, professionals’ expertise gives them an informational advantage over consumers, which professionals can exploit. State intervention in the healthcare market prevents health professionals from earning rents. In our theory, health professionals have no real expertise, no important informational advantage over consumers to exploit. State intervention in the healthcare market enables health professionals to earn rents.

abounded. The solution to this difficulty was to have government establish and enforce a medicinal monopoly on health professionals' behalf. The other difficulty was convincing government to do that, and its solution had to come first: health professionals needed to organize to apply pressure politically. Victorian health professionals did both, resulting in governmental regulation of quack medicine.

4 Regulating medicine in nineteenth-century England

4.1 Organized professional healthcare

As long as laissez-faire prevailed in England's medicinal marketplace, health professionals might not. In part to remedy that situation, in the nineteenth century, health professionals organized. "The Colleges of Physicians and Surgeons remained, as did the Society of Apothecaries; but they were little more than ghosts of past glories" (Porter 1995, p. 49). New bodies were needed, and ones that better reflected professional healthcare's makeup of "doctors" and "pharmacists". The result was the British Medical Association and the Pharmaceutical Society of Great Britain.²⁰

In 1832, physicians, surgeons, and general practitioners founded the British Medical Association to "unite the scattered members of our profession into one body" (Brown 2007, p. 239). "Central to this vision was the claim that its members should exercise dominion over all aspects of public health, something which demanded the elimination of other forms of health care provision," especially self-treatment procured from quack medicine vendors (Brown 2007, p. 240). To promote its agenda scientifically and politically, the Association launched the British Medical Journal.

²⁰ The former originally was called the Provincial Medical and Surgical Association.

Nine years later, pharmacists founded the Pharmaceutical Society “to promote the interests of the chemists and druggists” (Anderson 2006, p. 107). Like the British Medical Association, the Pharmaceutical Society had “a strong desire to restrict trade in the interests of its members” (Berridge and Edwards 1987, p. 114). Also like the British Medical Association, the Pharmaceutical Society created a publication to aid its cause: the *Pharmaceutical Journal*.²¹ The Society, however, was the better organized group, perhaps from better practice.

In the earlier part of the nineteenth century, chemists and druggists combined on an ad hoc basis to defend their interests politically. “The response of the pharmacists to threats was like a reflex action. Advertisements in the press, well-attended meetings, resolutions passed unanimously, lobbies organised, counsel briefed, and subscriptions collected...the hallmarks of political organisation” (Holloway 1987, p. 131). The “personal influence of the leading druggists with members of the government” also was helpful (Holloway 1987, p. 132). Such was the legacy that helped render the Pharmaceutical Society “so able to pressure the government effectively” in the late nineteenth century (Lomax 1973, p. 175).²²

²¹ Formerly, the *Pharmaceutical Journal and Transactions* and *Pharmaceutical Transactions*.

²² Organized professional healthcare shared common cause when it came to quack medicine vendors. But relations between the British Medical Association and the Pharmaceutical Society, and doctors and pharmacists more generally, were not always, or perhaps even often, harmonious. The reason is that their interests, though overlapping, were distinct and not infrequently opposed. Just as both groups of health professionals competed with quack medicine vendors, they competed with each other. Pharmacists were wont to “counter prescribe”, poaching on doctors’ advising privilege, much as the old apothecaries had done, but also on doctors’ dispensing practice, which, while diminishing in the nineteenth century, remained an important source of income. Doctors were eager to exclude chemists and druggists from such activity—if possible, to require their prescriptions for pharmacists to supply drugs and medicine. Within each healthcare profession, members’ interests likewise could diverge. Conflicts between pharmacists, for example, led temporarily to the creation of a rival professional organization, the United Society of

4.2 The Pharmacy Act of 1868

The crowning achievement of that pressure was “An Act to Regulate the Sale of Poisons”, or the Pharmacy Act of 1868, amended for clarity in 1869.²³ With respect to medicines, it accomplished three things. First, the Pharmacy Act designated a schedule of “poisons” for legal control. Part one of the schedule contained ten drugs, including strychnine and emetic tartar. Part two contained five drugs, among them, chloroform and “Opium and all preparations of opium or poppies” (Pharmacy and Poison Laws 1892, p. 63).²⁴ New poisons could be added to the schedule by the Pharmaceutical Society with approval from the government’s Privy Council. Morphine, for example, was added in 1869, as was red iodide of mercury.

Second, the Act required that all scheduled poisons be labeled “poison”—the article’s name, the seller’s name, and his address labeled too. Drugs contained in part one

Chemists and Druggists. Even still, disagreements could be, and at critical junctures were, set aside to address a common problem: quack medicine vendors.

²³ An earlier, though very modest, achievement that touched on medicine—but just barely—was the Arsenic Act of 1851. Another earlier, modest achievement was the Pharmacy Act of 1852, which gave persons registered under that Act exclusive right to the title “pharmaceutical chemist”.

²⁴ Pharmacists were divided on the inclusion of opium—an example of divergent interests within that healthcare profession. On the one hand, opium was the poisonous medicament most likely to be resorted to for self-treatment. Thus, for many pharmacists, a monopoly would be extremely valuable. On the other hand, the Pharmacy Act imposed costly requirements on the drugs it covered: labeling and, for those in the first part of the schedule, recordkeeping, which might also drive some consumers away. For pharmacists located in places with few other medicinal retailers, the benefit of the monopoly could be outweighed by the cost of the Act’s other requirements. That observation may explain why the first iteration of the Pharmacy Act included opium but a subsequent iteration did not, the drug having “been removed from...the poi- son schedule...to placate Lincolnshire, Cambridgeshire and Norfolkshire chemists”, who feared “that the original requirements would have seriously interfered with their business—opium being one of their chief articles of trade” (Lomax 1973, p. 175). Opium reappeared in the Act’s final version, though on the second, less restrictive part of its schedule.

of the schedule were subject additionally to the requirement that the seller had to know the buyer (or an intermediary who knew him) and to record the buyer's name and address along with his reason for purchase.²⁵

Third, the Act conferred on health professionals exclusive right to sell scheduled poisons: "From here and after...it shall be unlawful for any person to sell or keep open shop for retailing, dispensing, or compounding poisons...unless that person shall be a pharmaceutical chemist, or a chemist and druggist" or "a legally qualified medical practitioner" (Pharmacy and Poison Laws 1892, pp. 54–55 and 69).

We have not covered quack medicines. Neither did the monopoly bestowed on health professionals by the Pharmacy Act. "Nothing hereinbefore contained", it averred, "shall extend to or interfere with...the making or dealing in patent medicines"; only the labeling requirement applied to them (Pharmacy and Poison Laws 1892, p. 59). That provision was a serious area for the lobbying efforts of organized professional healthcare to have come up short, since "the inclusion of patent medicines within poison legislation had been one aim of both medical and pharmaceutical professions since the 1850s" (Berridge and Edwards 1987, p. 123).

That aim was frustrated by counter-lobbyists. Not the quack medicine vendors: they were too numerous and diverse in trades to organize effectively, and their interest was too small. Unlike health professionals, for whom the sale of medicaments was a primary source of income, for quack medicine vendors it was but a sideline. In contrast,

²⁵ Medicines supplied by licensed doctors or dispensed by licensed pharmacists that contained scheduled poisons largely were exempted from these requirements, including the use of a "poison" label.

quack medicine manufacturers—the medicines’ owners—had a major financial stake in the availability of quack medicines and were a much smaller group, putting them in an excellent position to mobilize politically, the result of which in 1868 was the Pharmacy Act’s “patent medicine” exemption.²⁶

In the 1880s, health professionals made new attempts to bring the sale of poisonous quack medicines under their exclusive control through parliamentary action. A bill advanced by the Pharmaceutical Society in 1881 proposed mandatory labeling of poisonous quack medicines and to restrict their sale to licensed pharmacists (Pharmacy and Poi- son Laws 1892, p. 104). It was defeated. A bill proposed by the Pharmaceutical Society in 1884 attempted the same (Holloway 1991, p. 247). It also was unsuccessful.

Difficulty in securing a monopoly through parliament prompted organized professional healthcare to try a different tack—or rather, branch of government. In 1890, chair of the British Medical Association’s Parliamentary Bills Committee and editor of the British Medical Journal, Ernest Hart, approached the government’s Treasury Solicitor—then Director of Public Prosecutions—and “urged that Government prosecutions should be instituted to prevent the continued sale of...secret preparations without being labelled poi- son” (British Medical Journal 1893, p. 367). Hart’s ploy was to make the case before the judiciary that poisonous quack medicines rightfully were subject to the Pharmacy Act’s regulations controlling other poisonous medicaments.

²⁶ The tax revenue generated from quack medicines perhaps also gave their manufacturers some political clout. See, for instance, King (1844).

It worked. In 1892, the Treasury Solicitor prosecuted a retailer of “Dr. J. Collis Browne’s chlorodyne”, a quack medicine whose principal ingredients were tincture of opium (laudanum) and chloroform, both scheduled poisons under the Pharmacy Act. That retailer was

J.T. Davenport, and while Davenport sold quack medicine, he was not a quack medicine vendor but a chemist. However, he also was a quack medicine manufacturer—the owner of Browne’s chlorodyne—which may explain why organized professional healthcare chose one of its own for test prosecution instead of, say, a stationer or a grocer. Whatever the reason, the fact that it did meant that the Pharmacy Act violation of which Davenport stood accused was failure to label his quack medicine “poison” rather than selling it at all. Editor of the Pharmaceutical Journal, Dr. B.H. Paul, provided expert testimony for the prosecution (Holloway 1991, p. 247).

The idea to take organized professional healthcare’s cause out of the parliamentary ring, where counter-lobbying presented problems, and into the judicial one was a stroke of genius. Predictably, the defense would argue that the Pharmacy Act didn’t apply, since it exempted “patent medicines”.²⁷ Enabling the court to find that, actually, it did, since the medicines in question were not in fact patented—few “patent medicines”, recall, had letters patent. And so it unfolded in *Treasury v. Davenport*.

Following its judicial victory, the Pharmaceutical Society published an announcement “for the purposes of reference in the future”, broadcasting the court’s

²⁷ Such was the defense offered by a seller of a poisonous quack medicine in a previous, though less far-reaching, case, who was prosecuted successfully in 1882 for violating the Pharmacy Act’s labeling requirements.

decision: “Proprietary Preparations containing poisons...are not exempt from the restrictions and conditions, as to sale by retail, imposed by” the Pharmacy Act (Chemist and Druggist 1892, p. 289). “The new policy was vigorously prosecuted and the council of the Pharmaceutical Society took action against offending dealers” (Berridge and Edwards 1987, p. 130).

In a lawsuit it brought against a grocer selling quack medicine the following year, Judge Francis Henry Bacon also found in the prosecution’s favor on the “patent medicine” question. It could not have hurt that Judge Bacon was cousin to Dr. B.H. Paul—the same Dr. Paul who edited the Pharmaceutical Journal and provided expert testimony for the prosecution in *Treasury v. Davenport* (Chemist and Druggist 1911, p. 41). In 1894, an appellate court affirmed Bacon’s interpretation of the Pharmacy Act: selling poisonous medicaments—quack medicines included—was the exclusive province of licensed doctors and pharmacists. Health professionals’ victory was complete.

5 Our theory versus public interest theory

The Pharmacy Act did not, in word or deed, seek to rid medicines of poisonous, potentially lethal substances such as chloroform, strychnine, and mercury—let alone opium. In the nineteenth century, those substances were medicines. Nevertheless, what are today considered orthodox consumer-protection arguments for governmental regulation of medicinal markets also were the ostensible grounds for the medicinal regulations imposed under the Pharmacy Act.

On the one hand, health professionals argued, a hazard was posed by dangerous (albeit necessary) drugs: to prevent accidental and intentional poisonings, the public had

to be safeguarded. On the other hand, they suggested, there was an information asymmetry: health professionals' special education, training, and expert knowledge required that they be installed as the guardians—exclusive dealers of poisonous medicaments to an ignorant public. Thus, the Pharmacy Act declared consumer protection as its remit: “Whereas it is expedient for the safety of the public that persons keeping open shop for the retailing, dispensing, or compounding of poisons...should possess a competent practical knowledge of their business...” (Pharmacy and Poison Laws 1892, p. 54).²⁸

Public interest theory regards that declaration as explanatory of Victorian quack medicine regulation. Our theory regards it as palaver and instead explains Victorian quack medicine regulation as the product of rent-seeking by health professionals. Adjudicating between the two theories is not as simple considering the substances brought under the law's control or even the rules it imposed, for those can be accounted for both by consumer-protection concerns and by rent-seeking.²⁹

To wit: the medicaments whose sale the regulation monopolized for health professionals, such as chloroform, emetic tartar, and especially opium, were indeed dangerous and responsible for deaths—both as a consequence of seller mishandling and of consumer misuse or abuse. Yet they also were officially recognized and recommended

²⁸ The Arsenic Act of 1851 also declared public safety its purpose, albeit of a different kind: “Whereas the unrestricted sale of arsenic facilitates the commission of crime...” (Pharmacy and Poison Laws 1892, p. 21).

²⁹ Nor is considering the timing of the regulation very helpful for this purpose. On the one hand, in the second half of the nineteenth century, multiple “poisoning scares” arose, which reflected public concern with dangerous substances. On the other hand, in the second half of the nineteenth century, the competition that health professionals faced from quack medicine vendors intensified dramatically.

medicaments, commonly used for self-treatment in the form of quack medicines in particular and sold by health professionals' competitors: quack medicine vendors.³⁰

Similarly, while labeling requirements for poisonous medicaments and a health-professional monopoly on their sale could help prevent poisonings, the latter also protected health professionals' rents by denying their competitors access to a key segment of the healthcare market.³¹

Taken alone, then, these facts of Victorian quack medicine regulation do not clearly recommend one theory over the other. However, other facts relating to that regulation do. Those facts are, at the very least, uncomfortable for the public interest theory of Victorian quack medicine regulation. In contrast, they are accounted for readily by our theory.

In the years before the Pharmacy Act's passage, professional pharmacists fought and blocked no fewer than four legislative attempts to regulate the sale of poisonous medicaments. Those proposals offered to inform consumers about what poisonous substances they were buying and consuming; to make seller's and consumer's errors that caused accidental poisonings less likely; to make it more cumbersome for consumers to buy dangerous and easily abused drugs, such as opium; and to require competency to sell

³⁰ Moreover, at least one contemporary claimed that the Pharmacy Act's schedule of poisons "omitted mention of many substances more harmful than those it contained" (Pharmacy and Poison Laws 1892, p. 117). The problem of opium poisonings featured prominently in the rhetoric of Victorian health reformers. And, in fact, "Opium poisoning was a commonplace matter" (Berridge and Edwards 1987, p. 79). "As a group", however, "the pharmacists were unconcerned with the dangers of drug abuse" (Lomax 1973, p. 175). And doctors scarcely more so: "even medical prescriptions ordering opiates and anodynes are frequently presented for dispensing an indefinite number of times with the cognisance of the prescribers" (British Medical Journal 1890, p. 974).

³¹ Further, it's telling that the Pharmacy Act's monopoly extended to all currently practicing pharmacists—without any requirement that they pass a competency exam—but required all future pharmacists to pass such an exam.

poisonous medicaments. In other words, pharmacists opposed regulations promoting the very consumer protections envisioned by public interest theory. Pharmacists opposed them because of what those regulations did not protect: health professionals' rents from the competition of quack medicine vendors.

In 1819, parliament introduced "A Bill for establishing Regulations for the Sale of Poisonous Drugs". The bill proposed to require sellers to label poisonous medicaments, preventing "dangerous and fatal accidents [that] frequently occur, from certain Poisonous Drugs and Medicines being mistaken and sold for those of a useful and harmless quality" (Carlisle 1819, p. 3). But it did not propose to restrict who could sell poisonous medicaments. The result: "a battery of opposition opened from an unexpected quarter—from the whole combined force of the trading body of the chemists and druggists" (Carlisle 1819, p. 17). Pharmacists "procured copies of the bill...and met to consider its provisions, some of which appearing to them 'likely to embarrass the dispensing of medicines, and not calculated to effect the object intended,' they prepared a petition to that effect, which was presented to the House of Commons", and "the bill was shortly after withdrawn" (Bell and Redwood 1880, p. 70).

Decades later, in 1857, the government proposed another "Bill to restrict and regulate the Sale of Poisons" (Pharmacy and Poison Laws 1892, p. 35):

No poison was to be sold to anyone other than a person of full age; a witness knowing the purchaser was to be present; and the purchaser was to produce a certificate signed either by the clergyman of the parish or district, by a legally qualified medical practitioner, or by a Justice of the Peace for the county or place, stating that the purchaser was known to the person signing such certificate, and might be trusted with the poison. A full entry of the sale was to be made. Packets containing poisons were to be wrapped in tinfoil as well as in paper, and bottles

were to have the word “Poison” moulded upon them....Vendors of poisons were to keep them under lock and key, and in certain vessels.

Packaging requirements. Restrictions on consumer purchase. Seller safe-storage regulations. Nearly everything a faithful servant of public health could want. But not what the Pharmaceutical Society wanted: a monopoly on the sale of poisonous medicaments. As Jacob Bell, founder of the Pharmaceutical Society, complained: “The security of the public would be better effected by an attention to the intelligence and qualification of the vendor than by any arbitrary regulations with regard to the shape of bottles, or to the obtaining of certificates...or those various regulations which have been proposed in the bill before the House of Lords” (Holloway 1991, p. 224). Oddly, he regarded it as one or the other.

An amended version of the bill was introduced, which offered to restrict the sale of poisons to “medical practitioners” and “licensed vendors”. Unfortunately for pharmacists, anyone who satisfied a board of six examiners, only one of whom was to be a representative of the Pharmaceutical Society, could become a licensed vendor—including quack medicine vendors. And no one who did not satisfy the examiners could retail poisons— including pharmacists. “The Society wanted restriction of sale of poison”, which this regulation would have achieved, “but only on its own terms”, which this regulation would not (Berridge and Edwards 1987, p. 114). As one Society member put it, regulation “must do something towards protecting them from the infringements of the trade by grocers, who took away the bulk of business” (Berridge and Edwards 1987, p. 114; *Pharmaceutical Journal and Transactions* 1857, p. 598).

Another version of the same bill was proposed in 1858, and from the perspective of pharmacists it was much improved. “The new Bill proposed to recognise medical practitioners and pharmaceutical chemists as vendors of poisons, but would have required all other dealers to submit to a special examination”, this time administered by a board of three, including a member of the Pharmaceutical Society. Still, it was not improved enough: “all other dealers” easily could end up being many dealers, a large number of quack medicine vendors. Against “the protests of the Pharmaceutical Society”, the bill went to the House of Lords, “But when it reached the Commons...there was such a storm of opposition from chemists all over the country that the Home Secretary had to speedily withdraw it” (Pharmacy and Poison Laws 1892, p. 36).

In 1859, the Home Secretary introduced yet another bill attempting to regulate the sale of poisons. “Provisions for labelling vessels or packets containing” poisons “in stock, and when sold, and entry of sales, were the features of this Bill” (Pharmacy and Poison Laws 1892, pp. 37–38). Provisions for monopolizing the sale of poisons in the hands of health professionals were not, so the Pharmaceutical Society opposed the bill and it was withdrawn. As Pharmaceutical Society president George Sanford would later bristle, “a mere Poison Bill, fettering us with registration of sales and attendance of witnesses, prescribing a particular form of bottle in which poisons might be kept and sold, and a particular corner of our shops in which they should be placed, would be only an encumbrance” (Pharmaceutical Journal and Transactions 1866, p. 538). Pharmacists didn’t want regulation that protected consumers; they wanted regulation that protected their rents.

Finally, a bill was proposed in 1863, which, among other things, would have required “that no patent or proprietary medicine should be sold unless a sworn certificate of its composition be lodged with the Registrar of the General Council, and a copy thereof kept open for inspection into the shop or place in which such medicine is sold” (Lancet 1864, p. 215). Here was a regulation to bring consumer-informing transparency to the sale of quack medicines so often maligned by health professionals for their “secrecy”. Yet the Pharmaceutical Society “raised rather unreasonable clamour against” the proposal and thwarted it (Lancet 1864, p. 215).³² Although this bill offered licensed pharmacists exclusive right to compound doctors’ prescriptions, it did not offer health professionals exclusive right to sell poisonous medicaments. And “What militates against our interests”, a pharmacist bemoaned in the Pharmaceutical Journal, is “that nearly or quite every grocer sells drugs” (Pharmaceutical Journal and Transactions 1864, p. 610).

Two further facts relating to Victorian quack medicine regulation are hard to reconcile with consumer-protection logic but are accounted for easily by our rent-seeking logic. The first parallels the Pharmaceutical Society’s stance toward the foregoing law, which pro- posed to require that retailers of quack medicines post those medicines’ ingredients publicly. Recall that in the 1890s, the Pharmacy Act’s regulations came to cover poisonous “patent medicines”—unless they actually were patented, in which case the “patent medicine” exemption applied. The courts reaching that decision found that since patenting a quack medicine required disclosing its composition, patented quack

³² Doctors, however, took a more positive view—an example of divergent interests between the healthcare professions. The 1863 proposal was put forward by the General Medical Council, the legal examination and registration body for English doctors created by the Medical Act of 1858.

medicines did not pose the health dangers of their unpatented counterparts. Hence, poisonous quack medicines with letters patent could be sold safely even by retailers who were not health professionals, while those without letters patent could not.

That decision enlarged the benefit to quack medicine manufacturers of securing letters patent for their medicines. So, manufacturers began seeking patents for more of them, even though, if secured, their “secrets” would be made public. Rather than encouraging this transparency-enhancing development, health professionals did the opposite: they torpedoed every new quack medicine application for letters patent they could, ensuring its composition would remain “secret” (Holloway 1991, p. 248). Plainly, such action is inconsistent with consumer protection. Perhaps less plainly, it’s consistent with rent-seeking. The more poisonous quack medicines that secured patents, the more of them would be exempt from the regulations of the Pharmacy Act—thus, the more competition that health professionals would continue to face from quack medicine vendors, who would be able to carry those medicines.

The final fact to consider is the Pharmaceutical Society’s stance toward safety regulations for how poisons should be stored, compounded, and dispensed. The first section of the Pharmacy Act charged the Society with developing a set of rules to govern pharmacists’ storefront handling of dangerous substances. The Privy Council was to see that it did. Curiously for health professionals concerned about safeguarding the public from mishandled poison, the pharmacists demurred. After badgering from the Privy Council, in 1869, a council of the Pharmaceutical Society proposed a set of rules—cautionary labels for poisons, distinctive storage containers, separate cupboards for

keeping them. But “As soon as these regulations were published, strenuous opposition emerged to their adoption” from the pharmacists. “Member after member voiced his opposition. The correspondence columns of the Pharmaceutical Journal filled with letters of protest” (Holloway 1991, p. 252). The proposed safety rules were withdrawn.

For the next 3 years an exasperated Privy Council tried repeatedly to induce the Pharmaceutical Society to adopt poison-handling rules that would protect public health, but to no avail. “The members of the Pharmaceutical Society had not only blocked their [own] Council’s attempt to introduce regulations for the storage and dispensing of poisons but had also secured the election of Council members specifically committed to resisting the introduction of such regulations” (Holloway 1991, p. 255). Such behavior is peculiar for guardians of consumer health. It is predictable for rent-seeking health professionals: With a poisonous-medicament monopoly in hand, why impose costly consumer-protecting regulations on oneself?

6 Conclusion

As if to anticipate our study, two historians of English public health warn: “it is important to see the role of the [Victorian health] profession...not simply as one of conspiratorial plotting, out to grab control...for self-interested ends. The situation was more complex than this” (Berridge and Edwards 1987, p. 76). Perhaps it was, but our analysis suggests not much.

CHAPTER THREE—JAMES M. BUCHANAN ON “THE RELATIVELY ABSOLUTE ABSOLUTES” AND “TRUTH JUDGMENTS” IN POLITICS

1 Introduction

Richard Wagner (2017) persuasively has argued that the critical insights motivating James Buchanan’s research program in political economy can be traced back to his 1949 publication “The Pure Theory of Government Finance” (Buchanan 1949). And key to understanding Buchanan’s argument is his claim that any theorist of public finance must postulate a political theory of the state prior to undertaking the analysis. We can engage in political theory/philosophy in an explicit and articulate manner, or we can do so in implicit and inarticulate manner, but what we cannot do is escape advancing a theory of the state. That exercise is a necessary prelude for the simple reason that all public finance proceeds from some conceptualization of possible answers to the questions of the appropriate scale and scope of governmental activity in the society under investigation.³³

Buchanan’s critique of the “fisc” and the arrangements that represented orthodox public finance in the mid-twentieth century was that economists had erred in at least three directions. First, by postulating an omniscient governmental authority, public finance economists had overstated the capabilities of the state in determining the optimal tax and expenditure regime. Second, by postulating a benevolent planner, public finance economists had underestimated the role that private interests play in the political process,

³³ That a theory of the state is necessary for doing public finance has parallels in other scholarly traditions. Most notably, Joseph Schumpeter (1928/1929) advanced a similar idea in his Bonn lectures. Such thinking was an important principle in German public finance thinking and can be summed up as “you can only really save by reducing the state’s tasks”. We thank an anonymous reviewer for bringing that literature to our attention.

possibly cutting against the realization of idealized notions of the public interest. Third, by assuming the existence of a coherent and stable social welfare function, public finance economists had assumed away the institutional framework necessary for political and social processes attempting to reconcile competing, divergent, and sometimes divisive scales of values that constitute the liberal order.

Buchanan's rediscovery of political economy in the post-WWII era can be seen as pursuing those three points as their logic dictates, and, in so doing, challenging the excessive formalism and aggregation that had taken hold of the economics profession under the influence of Paul Samuelson and modern welfare economics. The alternative program Buchanan defended led to renewed emphasis on the institutional framework within which economic life is played out. And it is that emphasis on the institutional framework that places his work in scientific cooperation with the ordoliberalism of the German economists, such as Walter Eucken. Eucken ([1940] 1950) had argued that both the pure abstraction of a single, simple, and general model would result in distancing the theorist from "reality", and the practice of gathering and piling up historical 'facts' without the guidance of appropriate theory would result in incoherent discourse about human conduct and affairs. Eucken's answer was to develop a genuine institutional economics and, in particular, to work in what we would today describe as the borderland between rational choice and historical institutionalism. Buchanan's subsequent development of public choice theory and especially his theory of constitutional political

economy provided methodological and analytical direction to the ordoliberal scholarly project.³⁴

While Buchanan’s constitutional economics and ordoliberalism developed somewhat independently, it is evident that both traditions dealt with similar problems and deployed similar methods of analysis. The ordoliberals and Buchanan both were concerned with rules at the constitutional level of study and sought to find arrangements that allow all of us to live together more harmoniously than we ever could separately. Buchanan’s “Old Chicago” style of thought also has been compared favorably to that of Walter Eucken, in that both focused on the importance of rules and economic constitutions (Köhler and Kolev 2013.) Finally, both Eucken and Buchanan spent much of their time thinking about the relationship between liberalism and democracy. Though not intersecting explicitly with Buchanan’s work on democracy, Eucken shared many concerns with Friedrich Hayek about the risks of tyrannies of the majority and rent-seeking on the part of organized interest groups (Nientiedt and Kohler 2016).

While other connections between the ordoliberals and constitutional economics have been explored—most notably by Viktor Vanberg (1988) and Helmut Leipold (1990)—we believe that much room still remains for cross-pollination between the two perspectives. Our contribution will be an in-depth analysis of Buchanan’s thought, aptly summed up in his 1959 article “Positive Economics, Welfare Economics, and Political Economy”. By engaging in that analysis, many of the most important subtleties in Buchanan’s thought— particularly his meditations on “the relatively absolute

³⁴ See Kolev (2017) and the references therein for a survey of ordoliberal thought.

absolute”—will be brought to light, potentially supplementing other work in the ordoliberal tradition.

Buchanan, like his mentor Frank Knight, was a “radical democrat” in his approach to understanding the “good society”. As Richard Wagner relays the story, Buchanan would frustrate an enthusiastic and eager graduate student when in response to a classroom claim that the answer to this or that question of public policy and public economics was known on the basis of modern economic reasoning, he would reply, “Mr. Wagner, you have no business answering a question like that. We are democrats here and not autocrats” (Wagner 2017, p. 179). Buchanan the Wicksellian understood that the age-old question remained unanswered: in a world in which choosing in groups is necessary, how could a man remain free when he must subject himself to wills other than his own? And as Vincent Ostrom (1996) put it, how can the fundamental “Faustian bargain” of using coercive force, with all its attendant risks and harms, be overcome to preserve the rule of law?³⁵ Built-in procedures were necessary to defend the rights of the minority against abuse by the majority. Even today, discussions of democracy and its relationship to liberalism are active areas of scholarly debate. Kolev (2019), in his review of Quinn Slobodian’s (2019) *Globalists: The End of Empire and the Birth of Neoliberalism*, ably summarizes the current literature on liberalism and the limits to democracy. Thus, a

³⁵ Vincent Ostrom, more than almost any American scholar, was deeply interested in ordoliberalism and the unique style of European political economy. The connections between the Ostroms (Elinor and Vincent) and the ordoliberals are quite strong ones, and it must be noted that Vincent’s connection to the ordoliberals pre-dates any of Buchanan’s.

closer reading of Buchanan's own conception of democracy can contribute to the discussion as well.

Democracy works precisely so long as permanent winning coalitions are prevented from running roughshod over others (Buchanan 1954) as well as to the extent that all players have the right to participate in the decision-making process as moral equals under the law. These observations have serious implications for public economics and public finance, which would be summed up in the subsequent literature as the "benefit principle". Two aspects of this benefit principle are vital to understanding Buchanan's political economy and social philosophy: just taxation should approximate as closely as possible what market prices would be for goods and services if a viable market existed for those goods and services (which there can't be because the goods and services under examination are public goods). The structure and responsibility of government action thus should be based on the idea that the relevant decision-making authority should match the extent of the externality under discussion, implying polycentricity or subsidiarity between local, state and federal governmental authorities. The last point gives structural meaning to the argument in *The Federalist* that the interest of the man must align with the constitutional rights of the place. As we have seen, Buchanan's political economy and social philosophy contain many moving parts, and that has tripped up many recent critics. They misunderstand his system because they do not account for the various subsidiary arguments on which he relies in developing his overall system of public finance in a democratic state, and the nature of the liberal order. Buchanan's unique brand of Virginia Political Economy differs from Chicago studies in

political economy owing to his emphasis on institutional frameworks and his constitutional perspective—both of which he shares with thinkers associated with the Freiburg School. And Buchanan stands out from other more technocratic discussions of public policy because of his emphasis on the role that the political process plays in the supply of and demand for public goods. As we will discuss, Buchanan’s two levels of analysis—the pre-constitutional and the post-constitutional—enable him to retain the hard-nosed economist’s emphasis on best strategic responses given a set of rules, while also giving scope to the imaginative role in constitutional construction and retaining the reformer’s hope for a better world.

To explore that intellectual balancing act, the paper at hand will look at three separate concepts in Buchanan’s work that are critical to understanding his social philosophy. First, we will discuss his idea of the “relatively absolute absolute” and the role that concept plays not only in his political and social philosophy, but in his understanding of economic science as well. Second, we will explore Buchanan’s arguments that “truth judgments”, while vital for science, actually can lead to tyranny in politics. Thus, the analogy between freedom in science and freedom in society breaks down and must be discussed with much care and subtlety. Third, we locate the solution to the potential tensions in Buchanan’s system in how we are to proceed as political economists in his essay “Positive Economics, Welfare Economics, and Political Economy” and again in his two-tiered system of constitutional analysis.

2 The Relatively Absolute Absolute

Buchanan had, we argue, three major influences—Frank Knight, Knut Wicksell, and the Italian public finance theorists. However, he also was influenced considerably by Adam Smith and David Hume, along with Ludwig von Mises and F. A. Hayek. The influence of Smith and Hume is obvious, while the influence of Mises and Hayek is less so, but it remains clear even in his earliest works to any close and careful reader. The Knightian, Wicksellian, and Italian connections are more well-known and discussed, including by Buchanan himself. But, even so, the deep influence of Knight in what Schumpeter called the pre-analytic cognitive act probably could be acknowledged even more than most commentators of Buchanan’s system of thought do in their narratives. Knight not only taught Buchanan to be critical of all received wisdom, but he also provided Buchanan with a way out of the morass of nihilism that Buchanan often encountered in his work. It is that aspect of Knight that we argue shaped much of Buchanan’s scholarship, and has much to recommend in parallel styles of thought, including the ordoliberal tradition.

Buchanan often invoked the Nietzschean notion of “windows” and emphasized the value of seeing through different windows to explain social interactions. But he did not believe that all “windows” provided the same vantage point for observation of the critical social reality under investigation. The philosophical principle that enabled him to sort between perspectives was the Knightian concept of the relatively absolute absolute. It is that position that enables Buchanan (and Knight before him) to be intellectually comfortable in the sciences of man and maintain the attitude that the scholar always should be willing to ask questions that may not have answers, but always resisting to

provide answers that cannot be questioned owing to his or her authority as a scientist. As Munger (2018a, b) has argued, the relatively absolute absolute is crucial to understanding Buchanan's entire system of thought. Such a position allows Buchanan skillfully to navigate the space between pure contractarianism and natural rights theories.

Acceptance of the relatively absolute absolute principle means that the scholar must learn to live with "a continuing tension between the forces that dictate adherence to and acceptance of authority and those very qualities that define freedom of thought and inquiry" (Buchanan 1990/2001, p. 13). Prudence means that we accept the conventional wisdom in many cases at one level, but progress in thought at a deeper level requires that we call the conventional wisdom into question in the most critical and thorough manner we can envision. Nothing is to be taken as sacrosanct and the rules by which we structure our societies certainly must be up for debate, but at one level we accept them as they are and make our decisions in accordance with them.

Buchanan's understanding of the relatively absolute absolute is best seen in his 1989 paper of the same title. In that paper, Buchanan presents three examples of the idea at work: The Marshallian short and long run, the act of making choices within constraints, and the changing of preferences over time. To Buchanan, some parts of the social and political order must be accepted as they are, and that we act within. Insofar as that is true, at one level we treat the rules as given, or as absolutes. However, doing so does not mean that the rules themselves are immune from being subject to scholarly criticism at a different level. While we must accept the rules and plan our strategies with them in mind, "they are always subject to inquiry, evaluative comparison, and reform,

upon the agreement of all affected persons and groups” (Buchanan 1989/1999, p. 454.).

Although the concept is made explicit in that paper, we argue that it undergirds nearly all of Buchanan’s work in political economy and can be seen directly in his 1959 paper.

Buchanan would apply the relatively absolute absolute to think through the implications of radical subjectivism and the decision-making calculus of individuals and groups, as well as in his examination of the differences between the pre- and post-constitutional levels of analysis. The intellectual waystation that this philosophical principle provides for Buchanan enables him to steer a course between objectivism and relativism in the social sciences and establishes the basis for his unique negotiating between the positive and the normative aspects of economics and political economy.³⁶ Not to introduce language distinctions for the sake of distinctions, but we believe that one way of understanding the position carved out by Buchanan is that only to the extent that economic science is practiced in a relatively value-neutral manner can political economy emerge as a value-relevant discipline that advances rather than discourages intellectual progress in social philosophical discourse.

The upshot is that as social theorists we must treat nothing as sacrosanct, but as social scientists we cannot challenge everything at once. Instead, we treat much of reality as the background constraint against which we examine issues critically. And our knowledge always is offered as provisional and subject to revision in the wake of reason

³⁶ Buchanan’s discussions of normativity are very similar to those of Max Weber’s. If Buchanan based his thoughts on those of his mentor Frank Knight, it may not be surprising because Knight was the first American scholar to translate Weber. Thus, the connection between Weber and Buchanan on normativity may be mediated by Knight. We thank an anonymous referee for this observation.

and evidence. No conjectures are immune—even the propositions we hold with the most confidence can- not be viewed as set in stone. Critical to Buchanan’s entire mode of thinking is the recognition that none of us, let alone any group of us, have access to a telephone line to God. Omniscience is denied as a working assumption both to the agents within our models, and to the modelers themselves. Buchanan is, of course, well known as a cofounder of public choice analysis, which denies stridently benevolence to social planners or market participants. Instead, public choice theory emphasizes the importance of behavioral symmetry in analyzing both the state and market. Man does not change when he moves between the two spheres—he remains fundamentally the same, defects and all. Buchanan also encouraged economists to abandon their propensities—implicit or explicit—to offer advice as if addressing a benevolent despot. So how does one do public economics if the existence of a coherent and stable social welfare function is denied, and the assumptions of benevolence and omniscience on the part of the state are rejected? For our present purposes, we argue that Buchanan can muddle through that dilemma owing to his adherence to the philosophical principle of the relatively absolute absolute and his persistent pursuit of that principle to its logical conclusions within the contexts of choice within rules and choice over the rules that will govern society.

3 “Truth Judgments” in Politics

In the 1940s, Michael Polanyi emerged as a major philosopher of science. Polanyi had a distinguished career as a physical chemist, but he was led seriously to re-examine the nature of scientific inquiry in light of the horrific consequences that befell his fellow scientists who were trapped inside of communist regimes and who were forced to

practice science in accordance with the priorities of the state. Polanyi's own experiences as a Hungarian national, along with Hungary's tumultuous political history in the early twentieth century, no doubt informed his philosophy as well. Science in the planned state was not characterized by the freedom of inquiry that Polanyi believed was essential for the creative process of scientific discovery. Polanyi began to develop an analogy between the free market economy, freedom of inquiry in science, and the political order of a free people. There is much to recommend in Polanyi's philosophical position, and it would be hard to deny its rhetorical appeal—especially in the context of his time. Freedom of inquiry does rely on the tug and pull of competitive forces in science and scholarship, and it does require a set of governing rules that define the “Republic of Science”.

But, while in general agreement with the spirit of Polanyi's position, Frank Knight challenged the letter of Polanyi's argument, particularly the usefulness of the analogy between science and politics. Science, Knight insisted, ultimately is a quest for truth. Some truths only be provisional, but flawed or incomplete ideas ideally are weeded out by the scientific process. Error eventually is identified, and bad ideas are discarded. But in politics, no such process is available to root out errors in judgment or to reverse policies that cannot meet the test of Pareto-superiority. Any claim to do so would not produce more freedom but instead rely on a claim of authority that could not be safely entrusted to any individual or group of individuals. Democratic politics is about discussion, not debate,³⁷ and the purpose of discussion is to come to agreement with one

³⁷ For greater elaboration of that point and the importance of freedom of inquiry in democracies, see Boettke and King (2019).

another about how to live together peaceably while respecting deeply held differences. Values never may be reconciled with another, and some may remain incommensurable, but that does not mean we must collapse into chaos and conflict.

Buchanan has at least twice provided extensive discourses on the debate between Polanyi and Knight, first in the 1960s and then in the 1980s. We argue that the timing of Buchanan's reflections is interesting because of the tumultuous circumstances during which he was writing about the nature of "intelligence within democratic action."³⁸ As Buchanan points out, the issue between Polanyi and Knight was the appropriateness of the analogy between science and politics and, thus, the "legitimacy of the same defense of freedom in science and in the political order." (Buchanan 1967/1999, p. 231; emphasis in original). To reiterate the point made above, science might be about "true" and "false", but on questions of a sociopolitical nature the world is not so simple. Moreover, insisting that such truth judgments can be said to exist in politics may not just be false but can actively be harmful. Such a mindset may preclude the very possibility of collective governance, and instead can lead to a situation in which politics becomes less about consensus and more about one group imposing its vision of the truth on others.

In the context of science, the Knightian position is that the relatively absolute absolute enables us to achieve scientific progress. At any given epoch, general agreement among practicing scientists establishes the relatively absolute absolute that the clever and creative minds of scientists must criticize and attempt to overturn. In Polanyi's notion of

³⁸ The title of Knight's book is based on the series of lectures he gave at Buchanan's Thomas Jefferson Center for Studies in Political Economy and Social Philosophy in the late 1950s and published in 1960.

truth seeking in science and society, a “truth” is established that provides the underlying reality of yet unknown discoveries. Knight is more accepting of the provisional and the contingent, even in science. The scientific process of discovery, no doubt, results in the weeding out of various competing explanations for the phenomena under investigation. False explanations are exposed and rejected. Buchanan argues that when we are choosing in groups, the situation is not at all analogous. He asks us to consider a decision about whether to paint our collective house red or white, arguing that:

Politics is the process through which the initial preferences are expressed, discussed, compromised, and finally, resolved in some fashion. Resolution may, however, amount to an overruling of some preferences in favor of others. Political order or stability requires, of course, that those whose preferences are overruled acquiesce in the collective outcome. It does not require that their “tastes” be modified so as to prefer the chosen outcome, or that, once they fully understand the alternatives, they will necessarily prefer what is chosen for them. Indeed, it is precisely the presence of dissent in the face of decision that separates genuinely democratic politics from that of the brainwashing variety. (Buchanan 1967/1991, p. 236)

At a fundamental level, what Buchanan is stressing is that in science we reasonably can say, with important caveats about the provisional nature of our knowledge, that “better” and “worse” explanations are available, and that the process of scientific discovery is to sort from the array of possible explanations those that are the “best”. In the political realm, however, we cannot make such statements. In a pluralistic and democratic society, some independent notion of the “best” conception of a “good society” that is the object of our search simply is unknown. No evaluative criteria independent of our ongoing discourse and ability to reach agreement are possible—that which emerges is that which emerges. Such statements cannot be made by economic experts, either. Values and opinions on fundamental issues differ even among the most

enlightened and reasonable observers. All that we can reasonably hope to ask from politics is an agreement on the general framework of rules under which we will interact with one another despite our differences and in consequence of our disagreements about the nature of the “good society”.

That conclusion cuts against the idealist tradition of politics, wherein politics is conceived of as a process for discovering “truth-judgments”. Such a position is quite problematic for genuine democracy. As Buchanan (1967/1991, pp. 242–243) puts it,

The truth-judgment conception of politics may be accompanied, as in the case of Polanyi, by an eloquent defense of individual freedom, based on the continuing and inexhaustible processes of discovery, on the provisional nature of all truth that is found, and upon the efficiency in explanation that only such freedom can insure. Unfortunately, however, the truth-judgment conception need not carry such a defense of individual freedom as its accompaniment. The conception lends itself, more or less naturally, to what amounts to an attitude of basic intolerance on the part of those who hold that certain political “truths” have already been discovered. Implicitly, these persons claim the “right” to impose “truth” on those who refuse, with apparent ignorance, stubbornness, or blindness, to recognize error. Members of the recalcitrant minority, those who reject the “truth” that politics reveals, become first cousins of the rainmaker, and they tend to be treated with similar scorn.

In a later essay “The Potential for Tyranny in Politics as Science”, Buchanan (1986) states his position in sharper terms. Science as compromise is nonsensical. Science as exchange is a false metaphor as well. Science is about replacing one explanation with another competing explanation that is deemed more correct. Conflict among the contending perspectives in science comes to be resolved through agreement among the participants in the relevant inquiry that a better explanation exists than what previously was believed. One scientist changes his/her views under the persuasive power of the explanation of another. There is, in science, a tendency toward mutual exclusivity;

either this, or that, explains the phenomena under investigation; either this, or that, statement is true. Contradictory statements cannot both be held to be correct in any serious way in science.

But in the political order of a free people, contradictory beliefs are held simultaneously by individuals at all times and places. Society holds no single scale of values, or one that is the “right” set of values. The conflict in values is not settled as it is in science, wherein one set of beliefs is deemed (provisionally) correct at one time and others must be discarded. Instead, the conflict of values is ameliorated and reconciled through compromise and the establishment of general rules of engagement that protect the private sphere and provide a public space for disagreements to be aired under conditions of respect and tolerance. Again, as Buchanan (1986/2001, p. 154) warns, “When politics is wrongly interpreted as being analogous to science, as a truth-discovery process, coercion may find moral legitimization for those who claim enlightenment”.

In short, science—including economic science—does not and cannot give its practitioners any privileged position in democratic discourse. The knowledge gained from science no doubt can aid in the task of striving for “intelligence in democratic action”. But the economist qua scientist has no more claim to moral superiority than the farmer, the teacher, the factory worker, or anyone else. To ascribe to scientists such authority and to place them on a level above their fellow citizens potentially endangers

the entire democratic enterprise. Within a truly democratic polity, we all are one another's equal, and dignity and respect must be afforded to all.³⁹

4 Positive Economics and Political Economy

As we have stressed, if the social role of the economist is to assist in the process of ensuring intelligence in democratic action, then it becomes essential to explain the relationship between positive economics and normative political economy. It is normative political economy, after all, that inspires many people to pursue careers as economists in the first place. So, the science of economics must find a way to reconcile itself with the art of political economy if it is not to lose one of its main attractors for subsequent generations of practitioners. But it also is true that engaging in normative analysis while claiming to be purely scientific undermines the exercise's entire legitimacy. A tension exists that must be negotiated, even if it never truly can be resolved.

Modern welfare economics, Buchanan insisted, evolved as it did by adopting the omniscience assumption, but that "seems wholly unacceptable" (Buchanan 1959/1999, p. 194.) The Bergson-Samuelson social welfare economics exercise can assert that it provides the economic foundation for the good society, but it does so only by introducing assumptions that undermine the analysis and lead to normative theorizing under the pretense of positive analysis. With the assumption of an accessible and stable social welfare function in place, the observing economist supposedly is empowered to identify

³⁹ Buchanan is not the only scholar to raise concerns about the that role experts play in democratic societies. Koppl (2018) provides a comprehensive modern treatment of the potential danger that can arise when experts are not subjected to the rigors of rivalry and competition.

welfare-enhancing positions independently of the behaviors of the individual agents within the model because the all-knowing benevolent social planner can predict perfectly what individuals would in fact choose if they were faced with the postulated circumstances. Optimality and efficiency are, in that exercise, defined within the confines of specific modeling parameters. But if the presumption of ignorance is substituted for that of omniscience, then the ways that we discuss optimality and efficiency change radically. To continue to make intelligible statements about welfare economics, another criterion must be selected, namely, transforming the ways in which political economists go about their science. It is that intellectual transformation that Buchanan began to explore.

The idea of presumptive efficiency does much work for Buchanan in that task. And, related to our earlier discussion, it might be worth stressing the relatively absolute nature of the move. The economist who, Buchanan argues, adopts the notion of presumptive efficiency retains various features of the Paretian analysis. The observing economist makes judgments about “efficiency” and attempts to translate individual preferences into alternative social arrangements. But those are provisional statements, not precise ones. Moreover, they are offered only as hypotheses to be tested in the arena of collective action, not as definitive policy choices. Additionally, the only way for economists to verify that their hypotheses truly represent improvements is by relying on the Wicksellian rule of unanimity. The economist cannot recommend policy A over policy B per se because without recourse to an objective social welfare function, and without the assumptions of omniscience and benevolence, no scientific basis is available

for such a recommendation. All policy discussions necessarily move us from the realm of the positive to that of the normative and we only fool ourselves when we do not recognize it explicitly in our work. “But”, Buchanan insists, “there does exist a positive role for the economist in the formation of policy. His task is that of diagnosing social situations and presenting to the choosing individuals a set of possible changes”⁴⁰ Buchanan continues, “He does not recommend policy A over policy B. He presents policy A as a hypothesis subject to testing. The hypothesis is that policy A will, in fact, prove to be Pareto-optimal. The conceptual test is consensus among members of the choosing group, not objective improvements in some measurable social aggregate” (Buchanan 1959/1999, p. 195).

Two points of emphasis in designing the “test” follow from Buchanan’s perspective. First, the proposed change must be accompanied by a true compensation scheme. Second, the changes proposed must be restricted to changes in the structural rules under which individuals make choices and interact with one another. Compensation is vital to the exercise because of vested interests in the status quo and as a result motivated reasoning in the collective decision-making process. Buchanan does not attribute any normative weight to the status quo, as we will see, but merely argues that it is the starting point from which any discussion of change must begin. To ensure intelligence in democratic action, discourse among reasonable parties must transform

⁴⁰ A similar point can be seen in the work of Max Weber, who argues that the political economist can and must help citizens realize the conflicts and contradictions between competing values that exist among citizens themselves. For Weber, political economists also must play a role in helping citizens resolve these contradictions themselves. We thank an anonymous reviewer for drawing our attention to this aspect of Weber’s thought.

motivated reasoning into indifference and thus allow purely rational discussion concerning the consensus to be built. And the change proposed is one in the structural rules or, in other words, the legitimate property rights under which the community will operate. The job of the political economist, in Buchanan's rendering, "is completed when he has shown the parties concerned that there exist mutual gains 'from trade.' He has no function in suggesting specific contract terms within the bar- gaining range itself" (Buchanan 1959/1991, p. 198).

We propose to illustrate Buchanan's point here with two examples. The first will be in the context of educational policy in Virginia in the wake of the *Brown v. Board of Education* decision in 1954, and the second will be a 1928 Supreme Court case dealing with the Cedar Rust Act of Virginia in *Miller vs Schoene*. Buchanan commented on both, and his analysis in those cases we want to suggest is consistent with the position articulated above. To reiterate, Buchanan proceeds from the position that we are one another's equals, and no individual or group of individuals is privileged over any other in the deliberations that constitute collective action. In the realm of collective decision-making, while the goal is to achieve intelligence in democratic action, it is vital to remember that no party or individual has access to "Truth" that can be imposed on others without their consent based on claims of moral superiority. Productive, let alone peaceful, social relations within the democratic polity depend on our ability to decide on social rules of the game that enable us to agree to disagree about fundamental issues, rather than descend into violence and chaos. That is how we learn to live together better than we ever could in isolation from one another. But the economic way of thinking within those limits

produces some surprising arguments that critics of the arguments presented often failed to appreciate.

4.1 Case A: Education Policy

Soon after the 1954 *Brown v. Board of Education* decision was handed down, Buchanan and one of his University of Virginia colleagues, Warren Nutter, began circulating a proposal regarding the structuring of education in the State of Virginia. The Virginia Plan for Universal Education proposed an arrangement wherein the parents of Virginia school children would receive vouchers that could be used to enroll their children in private schools. Studying how Nutter and Buchanan approached the plan helps document Buchanan's vision of political economy and the role of the economist within it.⁴¹ What is more important, Nutter and Buchanan's purpose was not to empower the forces of segregation or to fight the *Brown* decision, as MacLean (2017) has posited. Rather, it represents an outgrowth of their vision for the entire Thomas Jefferson Center for Studies in Political Economy, one which emphasized the study of political economy in the Smithian tradition and sought to maintain a free society absent encroachments from centralized authority. Thus, the entire project should be read through a Knightian lens; one in which the rights of all individuals are emphasized in the process of democratic decision making, and experts are not afforded any special status.

⁴¹ The Virginia plan in particular has been the center of many of the charges leveled against Buchanan by his critics. Substantial responses to those criticisms have been made by David Levy, as well as by Jean-Baptiste Fleury and Alain Marciano (2018). Much of our analysis herein has been inspired by and builds on their works.

From the outset, Nutter and Buchanan are clear as to how they view their role in the collective decision-making process. As they write in an early draft of the report:

In our professional or academic capacity, we have not participated in the public discussion of fundamental ethical questions involved in the school crisis, because we do not feel that our academic or professional status, of itself, bestows special authority or competence to speak on these issues. Each citizen speaks for himself on such matters, and each citizen's opinion weighs as heavily as any other's no matter what his position in society—whether farmer, lawyer, educator, or minister. (Nutter and Buchanan 1959, p. 1)

It is crucial to be clear about what Nutter and Buchanan are arguing for in the above passage. Nutter and Buchanan do not claim any special authority for themselves, nor do they believe that they have deduced what the best of all possible arrangements would be. Ultimately, the ethical discussion around schooling cannot be decided by the scientist or the expert, and they refuse to place their views above those of their fellows. No underlying political truth is waiting to be uncovered. Rather, we are faced with a situation when we must act collectively to reach any kind of decision. For that process to have legitimacy, we cannot unfairly weight or privilege any one citizen over another. To paraphrase Buchanan, each must count for one—and that is that. Any “truth seeking” views of the political decision-making process soundly are rejected at the outset.

In addition, Nutter and Buchanan accept several principles as given. Certain important aspects of education—particularly regarding its purposes and operations—are accepted as facts. Nutter and Buchanan chose to invoke such terminology directly:

Before getting down to facts, we shall have to review those generally accepted ethical principles, inherent in a democracy, that must be met by a school system. They are not presented, however, as mere opinions of one group or another, but as an irreducible minimum of principles actually agreed upon by society at large. In this sense, they too are facts. (Nutter and Buchanan 1959, p. 2)

Those “facts” are not facts because Nutter and Buchanan have deemed them to be so. Rather, they acquire the status of facts because they are broad principles that can garner unanimous support by the citizenry. The “facts” form the background conditions within which various ways of organizing the school system are to be situated. It may be the case that different principles could be adopted, but until a new set can be selected that commands unanimous support, the principles that Nutter and Buchanan identify are treated as absolute.

However, it is not the case that Nutter and Buchanan believe that political economists have no role to play in the process. While economists have no grounds for elevating themselves to positions above the rest of the citizenry, they can contribute to the decision-making process by bringing their expertise to bear on the issue. It is there that Nutter and Buchanan feel their contribution lies. Their knowledge of economic principles may matter immensely, particularly when it comes to considering the various ways that education can be financed and when thinking about the potential effects that conferring on the state a monopoly of education will have. But even here Nutter and Buchanan refuse to place the economic concept of efficiency above other considerations:

From a strictly economic point of view, the best method of operating schools is, in the first place, the one that provides the most education services for a given expenditure of resources. Put another way, it is the system that provides a given standard of education at least cost. This is the test of efficiency, and it is an important one. But equally important in a democratic society is the test of progress. (Nutter and Buchanan 1959, p. 6)

At the same time, tradeoffs likely will have to be made. The ultimate choice settled on will involve compromise. To navigate those tradeoffs, economics will be

necessary. But tradeoffs do not mean that economics, or the insights of the economist, have the final word. The end goal is to make what Nutter and Buchanan refer to as an “intelligent choice” (Nutter and Buchanan 1959, p. 6). Yes, the insights of the political economist matter in that choice, but only as one input to the choosing process—not as a trump card played by someone with access to an underlying objective “truth-judgment” reality.

Finally, Nutter and Buchanan envision education as playing a crucial role in a functioning democracy. Given that vision, compulsory education and collective financing of education must be necessary. To ensure that access to education is available to the least well-off, Nutter and Buchanan advocated subsidization of poorer people by wealthier ones:

It is equally clear that there must be collective financing of universal education, for some parents will not be able to afford the minimum quality of education prescribed by government for their children. The education of these children must be subsidized—that is, financed by funds collected from persons with higher incomes. Education cannot be denied to those who lack means, not only because social interests dictate that they should be informed citizens, but even more importantly because education is the most effective measure at our disposal for rectifying the inequalities of opportunity suffered by the less fortunate members of our society. (Nutter and Buchanan 1959, p. 3).

Buchanan carried those views with him throughout his life. In a letter to the Institute of Economic Affairs’ Arthur Seldon, Buchanan expressed concerns about the potential for voucher systems to restrict the provision of quality education to poorer students. He sought adamantly to avoid what he referred to as “the evils of race-class-cultural segregation that an unregulated voucher scheme might introduce” (Buchanan

1984). An educational system that created an elite by withholding certain opportunities from the rest of the citizens could not be justified.

Nutter and Buchanan's Virginia Plan for Universal Education, and the way they viewed their distinct role in crafting and proposing it, provides a clear illustration of Buchanan's vision for the political economist as outlined in his 1959 essay. Economists are given no special status, but they can still provide advice that may be essential for an intelligent democratic decision to be reached. Even when economists make proposals, their recommendations can be treated only as tentative hypotheses subject to confirmation by a rule of unanimity. Finally, although certain rules and parameters must be treated as relatively absolute absolutes, the potential for proposing new solutions remains. Gains from trade still can be identified, subject to acceptance by the rest of the polity through a process in which no citizen is made subservient to others or weighted below their fellows.⁴²

4.2 Case B: property rights policy

Our second case builds on Buchanan's analysis of the 1928 Supreme Court ruling in *Miller v. Schoene*. In studying Buchanan's responses to analysis initially offered by

⁴² It also is important to recognize how that viewpoint was reflected in Buchanan's opinions regarding segregation. Nutter and Buchanan argue that they oppose both forced integration and forced segregation, as they oppose coercive arrangements unless absolutely necessary. They do, however, emphasize that their ethical views have nothing to do with their economic analysis. David Levy likewise has provided arguments regarding Buchanan's disapproval of the Education Plan being used for pro-segregation purposes (Levy and Peart, the Virginia plan for universal education, working manuscript.) Later in his life, Buchanan expressed support for hiring quotas based on race to ensure that equality of opportunity was not denied to any citizen based on personal characteristics beyond their control. Those opinions place Buchanan at odds with some of his libertarian and conservative colleagues but were necessary consequences of his deep commitment to the fundamental democratic principle of equality under the law. Other policies supported by Buchanan— such as massive subsidization of higher education and a 100% inheritance tax—shows that Buchanan was concerned with institutional calcification that unfairly could privilege some individuals over others and grant them unjustified advantages or power.

Warren Samuels, we can shed more light on how Buchanan applies his unique view of welfare economics and the role of the political economist within it. Emphasis is placed on the importance of the status quo—again, not because it commands any normative weight, but because if we truly want to identify potential opportunities for mutually beneficial voluntary exchange without relying on coercion, we can start from no other position. While the case at hand certainly pales in moral weight compared to the previous one, the underlying point remains the same. So, while the two cases obviously are not on the same footing, they are both useful for our analysis.

The key issue in *Miller vs. Schoene* revolved around the rights of cedar tree owners as opposed to those of apple tree owners. In the early twentieth century, a disease known as cedar rust began to infect cedar trees in the state. While the disease was not fatal to cedar trees, it was lethal to other trees—most notably apple trees. In response, the Virginia legislature enacted a statute in 1914 authorizing state officials to investigate and potentially destroy any red cedar trees located within two miles of an apple orchard.

The Virginia legislature was under no obligation to compensate the owners of cedar trees for destruction of their property. As Boettke (2001) argues, for Samuels, the case highlighted the inescapable fact that governments must make choices to establish one set of property rights at the expense of other parties. The state never can extricate itself from such situations—as conflicts arise, the state must decide. It is important, however, for the state to adopt some sort of criteria by which to judge its decisions. In *Miller v. Schoene*, Virginia based its decision on the belief that the public value of the rights of apple tree owners outweighed the value of the rights of cedar tree owners.

In Samuels' view, the case revealed further insights. Given that governments necessarily make choices between various private interests, one must consider which of them uses government and for what purposes—that is, recognize the influences that private interests have on state action. Government then becomes another tool of social control, and a device for altering and restructuring currently existing private property arrangements. Samuels urges economists to consider what he believes to be the heart of the matter:

In every case, the logical and substantive nexus of the matter is the role of law in restructuring private power, which is to say the response or use of government to and by those who would use government to restructure the distribution of private power, or use government for some other purpose. (Samuels 1971, p. 448)

In response, Buchanan sought to outline an alternative view of Schoene—one in line with his vision of political economy. To Buchanan, the conclusion that the government chooses based on an “efficiency” criterion cannot stand. That conclusion follows because of his insistence that neither legislatures nor the courts have access to a stable social welfare function, and that both lack the omniscience to divine one in the first place. As Buchanan writes,

There is, of course, no guarantee that the State will select the alternative which maximizes the values of the social product, and, even when this concern is dropped, there is nothing in Samuels' model which allows for the mutuality of gains that is part-and- parcel of the economic approach to social interaction. (Buchanan 1972, p. 441).

That is, apart from a framework wherein the relevant parties can bargain with each other and reach consensus, there is no way for us to know whether or not the decisions made by the state will be efficient. Here, Buchanan denies the ability of the state to determine what the “right” solution may be, comporting well with his support of

Knight's explicit rejection of truth-judgments in politics. That is not to say that Buchanan is ignorant of inequalities that may result from discrimination. As mentioned previously, Buchanan saw programs such as mandatory hiring (as distinct from employment) quotas as justifiable to preserve equal treatment of individuals. Buchanan also believed that it was necessary to subsidize education for those who lacked the means to pay for it, with the explicit goal of education being a way of rectifying systemic inequalities. Finally, Buchanan also took time in his presidential address to the Southern Economics Association to encourage economists to study the various political institutions in which individuals interact with one another, including those in which power and hierarchy are real factors (Buchanan 1964, p. 220). However, it is inadmissible for the state unilaterally to weigh some interests over others in the decision-making process. Emphasis should be placed on allowing individuals to find solutions and agreements that allow them to capture the gains from trade and move to Pareto-superior arrangements.

Buchanan is cognizant of the fact that the costs of reaching such agreements could be quite high. As a result, some measure of action by the State of Virginia may have been appropriate. However, the state's maneuvering room does not mean that one group has license to run roughshod over another. Rather, the discussions should take place within the Virginia legislature. But what is important is that real compensation be part of this trading process. As Buchanan (1972, p. 443) argues, "Only when transfers are actually made can relative values be measured by those whose interests are directly involved". What cannot stand, in Buchanan's framework, is any solution that is decided absent a bargaining process between the parties involved. No experts—not the state, nor

the courts—should claim to know the correct solution. Indeed, that framework forms Buchanan’s main critique of Samuels’ interpretation of the Schoene case. If the state is empowered to decide whose rights are to be favored or violated, and any potential bargaining avenues are precluded, then we have conceded something akin to truth judgments in politics.⁴³ We have moved beyond a position at which the relatively absolute absolute can rescue the economist, and instead find ourselves in one where expertise or authority carries the day.

If we are to hold that mutual gains from trade exist, and that the appropriate way to proceed is to allow both parties to seek Pareto-improving bargains, Buchanan imagines a different way in which the Schoene case could have unfolded. Representatives for both parties could have forwarded various proposals aimed at resolving the conflict. A necessary component of such proposals would be the actual—not theoretical—compensation necessary to secure the agreement of the other party. For example, proposals by representatives from the apple growers would include some sort of compensation to induce cedar tree owners to destroy their property. It is only through agreement to such proposals that we can say that efficient arrangements have been reached. The role of the state is not to make decisions without the inputs of the affected parties. Rather, the state can clarify what the rules in place are to enable each side to see what opportunities for exchange do exist.

⁴³ At the end of the day, the social scientist still cannot substitute his or her judgment for that of their fellow citizens. They cannot override them, even when they have the best of intentions. In Buchanan’s framework, each individual wields an effective veto with which to prevent the imposition of states of affairs in place of the status quo.

Of particular importance in Buchanan's analysis is the nature of the status quo.

Buchanan does not emphasize the status quo because he believes that it has any special moral standing—far from it. Rather, the status quo must be taken as given by the political economist simply because it is the only way that incentives for finding voluntary agreements can be preserved. Change can be desirable, and the potential for such changes should be considered by the political economist. But everything cannot be changed at once, and the only changes that can be said to be beneficial are those that can be agreed upon by all. The costliness of the decision-making process may imply that we restrict the unanimity criterion to the rules-level of constitutional analysis, but that does not mean we should shy away from proposing changes to the rules.

Buchanan's analysis of *Schoene v. Miller* allows us to see the important parts of his system in action. The status quo is accepted as a starting point, but it is not immutable by any stretch of the imagination. Gains from trade still do exist, and actively should be sought out, yet we must start by treating the current configuration of property rights and legal institutions as fixed, within which we are able to bargain. Doing so is the only way to ensure that whatever changes are adopted are made for the benefit of all. Again, Buchanan's approach as outlined in the 1959 paper clearly is illustrated by examining *Schoene*. None of us have a telephone line to God, and none of us have access to anything approximating political "truth". That should not prevent us from imagining and striving for a better world. But the only way to do so is by accepting the status quo as it is and finding ways from which we can bargain away from it. In that way, the meaning of "the relatively absolute absolute" is made clear. At one level, we must accept the rules

as given and carry out our plays within them, but at the constitutional level we can challenge and change various aspects of the rules, so long as any alterations can be accepted and agreed to by all.

5 Conclusion

We have shown the consistency between Buchanan's adherence to the philosophical position of the relatively absolute absolute and his approach to political economy. Doing public economics without recourse to an objective and stable social welfare function that is to be maximized by an omniscient and benevolent social planner presents the theorist with a host of issues that must be confronted.

As we have argued, Buchanan's approach to political economy and the relationship between the economist and democratic society can be seen most clearly in his 1949 essay, "Positive Economics, Welfare Economics, and Political Economy". First, none of us—not even Buchanan himself—can assume to know what the "correct answers" to political decision-making may be. In fact, such a notion of truth in politics must be rejected explicitly. Instead, the economist assumes a much humbler role as a co-equal in the democratic process—one who has training that may help inform a collective decision, but not one who should be elevated or weigh more heavily than their fellow citizens. Second, the only way to know if new rules meet the definition of Pareto-optimality is to submit any proposed changes to the democratic test, meaning that we must accept the status quo as it is, but not because it deserves normative approbation or can be said to represent the best of all possible worlds. It is here that the idea of "the relatively absolute absolute" is brought to bear. We must accept the rules as we play

within them, but at the constitutional level of analysis the rules themselves should be subject to careful examination, even if we cannot change everything at once or by governmental fiat. We have argued that that unique approach is put into practice by Buchanan in the two case studies we have selected.

Buchanan presents a vision of political economy wherein we must govern together, rather than over each other. In fact, any system that imposes the vision of one subset of society over the others by way of a permanent winning coalition is unjustified. Social cleavages will still exist, but we can strive for broad constitutional rules that allow us to live together and reap the benefits that come from social cooperation. Agreements can be made, and hopes for social reform do not have to be dashed. However, the only way to ensure that such progress can be made is to build the process on firm democratic—truly democratic—foundations. It is that vision Buchanan sought to illuminate, and it is one that we believe still has relevance for political economists of all stripes working today.

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