

BRUNO LEONI, JAMES M. BUCHANAN, AND THE QUEST FOR A THEORY OF COLLECTIVE ACTION

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Introduction

In this essay, I will compare the political theories of Bruno Leoni and James M. Buchanan. While their relationship has often been acknowledged in the (mostly Italian) scholarship about Leoni¹, it is rarely accounted for in contributions that deal with the development of Buchanan's ideas². Overall, a comprehensive treatment is still lacking.

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¹ See A. MASALA, *Il liberalismo di Bruno Leoni*, Soveria Mannelli, Rubbettino, 2003, pp. 152-174, along with the literature quoted on p. 163, n. 50. More recently, some remarks can be found in R.A. MODUGNO, *Bruno Leoni and Friedrich von Hayek on Democracy*, in R.A. MODUGNO, D. THERMES (ed. by) *Bruno Leoni. Per un liberalismo integrale*, Soveria Mannelli, Rubbettino, 2017, pp. 172-184. In the English-speaking world, Leoni has mainly attracted attention for his theory of law and spontaneous order, see P.H. ARANSON, *Bruno Leoni in Retrospect*, in A. MARCIANO (ed. by), *Law and Economics: A Reader*, London, Routledge, 2009, pp. 198-238, T. ZYWICKI, *Bruno Leoni's Legacy and Continued Relevance*, in "The Journal of Private Enterprise", vol. XXX, n. 1, 2015, pp. 131-141, and P.J. BOETTKE, R.A. CANDELA, *Rivalry, Polycentrism, and Institutional Evolution*, in C.J. COYNE, V.H. STORR (ed. by), *New Thinking in Austrian Political Economy*, Leeds, Emerald Group Publishing, 2015, pp. 1-19. Leoni's influence on Hayek is a recurring topic in these essays, see R. CUBEDDU, *Friedrich A. von Hayek and Bruno Leoni*, in "Journal des Economistes et des Études Humaines", vol. IX, n. 2/3, 1999, pp. 343-370; J. SHEARMUR, *Editor's Introduction*, in *The Collected Works of F.A. Hayek, Volume XIX: Law, Legislation, and Liberty*, ed. by J. SHEARMUR, The University of Chicago Press, Chicago 2021, pp. xxi-xlvii.

² A notable exception is A. MARCIANO, M. MOSCA, *Italian Influences on Buchanan's Research Program*, in R.E. WAGNER (ed. by), *James M. Buchanan: A Theorist of Political Economy and Social Philosophy*, Cham, Palgrave Macmillan, 2018, pp. 1053-1079 (on pp. 1071-1073).

The paper is divided into four sections. After providing some historical details about the main occasions on which Leoni and Buchanan interacted (§1), I will trace the similarities in their early work by comparing Buchanan's 1949 essay on the pure theory of government finance and Leoni's critique of Benvenuto Griziotti (§2). I will then move on to the phase of the mid-1950s, which was devoted to developing an economic theory of politics and exploring the possible overlaps between individual choice in market and political settings (§3). Finally, I will examine Leoni's reactions to *The Calculus of Consent* (§4).

My overarching thesis is that, while Leoni and Buchanan agreed on the merits of methodological individualism and the economic approach, their theories of collective action diverged significantly. Both of them emphasized the asymmetries between market and politics and proposed different ways of implementing the concept of exchange in political analysis. However, whereas Buchanan ultimately resorted to a contractarian framework, Leoni believed that this solution failed to account for the element of power in political relations. This disagreement is also reflected in Leoni's normative preference for an evolutionary order in which recourse to collective choices is minimized.

1. *Biographical remarks*

It is well known that Buchanan spent the 1955-1956 year in Italy as a Fulbright Fellow to study the main sources of the Italian school of public economics. While there, he visited Pavia, where he made the acquaintance of Benvenuto Griziotti, full professor of public economics and financial law until 1955 and a leading academic in the field. More importantly, he met Griziotti's assistant, Francesco Forte, who would later become Buchanan's co-author and friend³. Pavia was also the academic home of Leoni, who, by that time, was already a well-established professor of political theory (*dottrina dello Stato*) and philosophy of law (he had been appointed to his first professorship in 1942)⁴. Forte had attended

³ See J.M. BUCHANAN, *Italian Retrospective*, in *Better than Plowing and Other Personal Essays*, Chicago and London, The University of Chicago Press, 1992, pp. 82-92 (p. 89).

⁴ See A. MASALA, *Il liberalismo di Bruno Leoni*, cit., p. 15.

Leoni's lectures, and, as he recalls, he told Buchanan that "Leoni had developed an approach to legal philosophy and to the political theory of the State based on the same methodological individualism that he was exposing"⁵. Buchanan, however, did not arrange a meeting with Leoni through Forte, as he thought he was not yet prepared to "make research thrusts into legal and political philosophy"⁶.

Buchanan and Leoni first crossed paths at the 1957 Mont Pelerin Society meeting in St. Moritz, Switzerland (the first one Buchanan attended)⁷. In 1958, Arthur Kemp invited Leoni to deliver a series of lectures at the Claremont Men's College Fifth Institute on Freedom and Competitive Enterprise. These lectures were later published as *Freedom and the Law* (1961). In October 1958, Kemp sent Buchanan an edited first draft of the book⁸. Buchanan responded favorably, declaring himself "quite impressed with the man's wisdom as well as his scholarship", and adding that Leoni "would be a stimulating influence to have around for a while"⁹.

In 1959, Leoni and Buchanan met at least twice. The first time was in June, at a seminar hosted by the University of North Carolina at Chapel Hill, which Friedrich A. von Hayek also attended¹⁰; the second was at the Mont Pelerin Oxford meeting, in September. The paper Buchanan gave was later published in *Il Politico*, probably under Leoni's auspices¹¹.

⁵ F. FORTE, *On James Buchanan's Public Choice Enterprise*, in "Journal of Public Finance and Public Choice", vol. XXXI, n. 1-3, 2013, pp. 61-75 (p. 68).

⁶ J.M. BUCHANAN, *Italian Retrospective*, cit., p. 89, quoted in F. FORTE, *Buchanan's Public Choice Enterprise*, cit., p. 69. See also A. MARCIANO, M. MOSCA, *Italian Influences on Buchanan's Research Program*, cit., p. 1072.

⁷ See the report *X Congresso della Mont Pelerin Society (Saint Moritz, 2-8 settembre 1957)*, in "Il Politico", n. 3, 1957, pp. 706-709; J.M. BUCHANAN, *I did not call him "Fritz": Personal recollections of Professor F. A. v. Hayek*, in "Constitutional Political Economy", vol. III, n.2, 1992, pp. 129-135 (p. 130).

⁸ *Arthur Kemp to James Buchanan, October 9, 1958*, James M. Buchanan Papers, C0246, Box 59, Folder 4, Special Collections Research Center, George Mason University Libraries.

⁹ *James Buchanan to Arthur Kemp, October 21, 1958*, James M. Buchanan Papers, C0246, Box 59, Folder 4, Special Collections Research Center, George Mason University Libraries.

¹⁰ See L.P. LIGGIO, T.G. PALMER, *Freedom and the Law: A Comment on Professor Aranson's Article*, in "Harvard Journal of Law and Public Policy", vol. XI, n. 3, pp. 713-725 (p. 716, n. 11).

¹¹ J.M. BUCHANAN, *Economic Policy, Free Institutions and Democratic Process - Politica economica, libere istituzioni e processo democratico*, in "Il Politico", n. 2, 1960, pp. 265-293.

Meanwhile, Buchanan and Gordon Tullock were working on a rough draft of *The Calculus of Consent*, which they sent to a selected group of scholars, including Leoni, in a mimeographed copy¹². Then, in 1960, Buchanan invited Leoni as a guest lecturer at the Thomas Jefferson Center for Studies in Political Economy. Between October 19 and December 8 Leoni held four lectures, under the collective title *Politics, Freedom and the Law*: (1) *Decision-Making, Economic and Political: A Semantic Inquiry*; (2) *Political Decisions and Majority Rule*; (3) *Freedom and the Law: I*; (4) *Freedom and the Law: II*¹³.

Although Buchanan and Leoni maintained a close relationship until Leoni's death in 1967¹⁴, the period around 1960 was undoubtedly the most intellectually fruitful. As the titles of Leoni's lectures suggest, their discussion revolved around many important subjects, including the economic approach to politics, the theory of collective choice, the virtues and limits of democracy, and the theory of institutions. These themes would prove crucial not only to the development of both thinkers' ideas but also to the evolution of political theory as a whole.

2. *Leoni's foray into the methodology of public economics*

Buchanan and Leoni's early works converged independently on a common project: the development of an individualist theory of the state. Although they came from very different disciplinary backgrounds – re-

¹² The document with the list of addresses, along with the individual cover letters (mailed on June 1, 1960), is located in the James M. Buchanan Papers, C0246, Box 100, Folder 7, Special Collections Research Center, George Mason University Libraries. It was reproduced in D.M. LEVY, S.J. PEART, *Towards and Economics of Natural Equals: A Documentary History of the Early Virginia School*, Cambridge, Cambridge University Press, 2020, pp. 199-200.

¹³ *Politics, Freedom and the Law Bruno Leoni fall 1960 lecture series poster, 1960*, James M. Buchanan Papers, C0246, Map-case 21.4, Special Collections Research Center, George Mason University Libraries. Another undated note from Buchanan indicates an intention to prepare a series of seminars or a collection of essays on collective action, decision-making rules, constitutional choice, and similar topics. The project would have involved Leoni, Tullock, Armen Alchian, Rutledge Vining, Charles E. Lindblom, and Anthony Downs, see James M. Buchanan Papers, C0246, Box 122, Folder 8, Special Collections Research Center, George Mason University Libraries.

¹⁴ See J.M. BUCHANAN, *Italian Retrospective*, cit., p. 89.

spectively, legal theory and welfare economics – there is a document that allows us to appreciate their similarities in great detail. I’m referring to a paper that Leoni published in 1950, criticizing a 1943 essay by Griziotti, *Mezzi dell’attività economica e mezzi dell’attività finanziaria* (*Means of economic activity and means of public finance*).

Although Griziotti had a considerable influence on Buchanan’s ideas about public debt¹⁵, his general theory was very far from the individualism Buchanan and Leoni advocated. As early as 1929, in his *Principii di politica, diritto e scienza delle finanze* (*Principles of Politics, Law, and Public Economics*), he had argued against the “economic conceptions” of fiscal activity proposed by Maffeo Pantaleoni, Emil Sax, Knut Wicksell, Erik Lindahl, Luigi Einaudi and Antonio de Viti de Marco¹⁶. According to these thinkers, the needs of individuals were the force behind state activity: the public sector was only one possible destination of private wealth, and the allocation of funds to it was ruled by the principle of decreasing marginal utility. Griziotti’s response turned this perspective on its head: “the state looks upon the citizens as a collectivity; and the very *raison d’être* of the state stems from the need to homogenize the will of the collectivity, at the cost of exercising coercion on individual wills”¹⁷. Griziotti did not ignore the economic element of public finance, but he thought that the political and legal aspects were paramount¹⁸.

The 1943 paper repeats this argument but focuses more on the distinction between the means and ends of private action and those that define the sphere of the state. The latter are more extensive in scope, quality, and complexity. The fact that the state has the possibility of using coercion to appropriate private wealth is alone sufficient to “establish that there is no limitation with regard to the means nor exclusive, that is, economic, criterion for the choice of means in relation to ends”¹⁹. In other

¹⁵ See F. FORTE, *Buchanan’s Public Choice Enterprise*, cit., p. 71.

¹⁶ B. GRIZIOTTI, *Principii di politica, diritto e scienza delle finanze*, Padova, CEDAM, 1929, pp. 23-24. Unless explicitly indicated, all translations from Italian are my work.

¹⁷ B. GRIZIOTTI, *Principii*, cit., p. 27.

¹⁸ Here I cannot delve into the intricacies of Griziotti’s thought and of his position in the Italian school. For an introduction see R. FAUCCI, *La scienza economica in Italia (1850-1943). Da Francesco Ferrara a Luigi Einaudi*, Napoli, Guida Editori, 1982.

¹⁹ B. GRIZIOTTI, *Mezzi dell’attività economica e mezzi dell’attività finanziaria* (1943), reprinted in B. LEONI, *A proposito dei «Mezzi dell’attività economica e mezzi dell’attività finanziaria» di Benvenuto Griziotti*, in “Rivista di Diritto Finanziario e Scienza delle Finanze”, vol. IX, n. 3, 1950, pp. 219-239, on pp. 220-227. The quote is on p. 224.

words, the state is not subject to ordinary economic constraints, but “it dictates [...] the general orientation of national life and economy” with a logically “prior and superior decision”²⁰.

In his commentary, Leoni interprets Griziotti as an upholder of a “juridical-dogmatic”²¹ and “organicist”²² theory of politics, based on a false analogy between the state and the individual. This analogy depicts the state as a single entity, endowed with its own set of ends, will, and instrumental faculties. Griziotti is therefore to be listed among those modern political philosophers, like Rousseau and the German idealists, who forged “the myth of the state as a *res*”²³. Leoni takes the opposite side: only individuals can be said to have intentions and plans²⁴. He labels his view of the state as “sociological”²⁵, meaning something that is connected to “the empirical observable reality”²⁶. Here he relies on the authority of Hayek, who only two years earlier had published *Individualism and Economic Order* (1948)²⁷ – a key text in Leoni’s development²⁸, along with Ludwig von Mises’ *Human Action* (1949)²⁹. It was Hayek who “warned scholars against the Comtean temptation of thinking that [...] the so-called social ‘complexes’, like states and similar things, are ‘observable’”³⁰.

Next, Leoni goes on to address the question of the means-ends re-

²⁰ B. GRIZIOTTI, *Mezzi dell'attività economica*, cit., p. 225.

²¹ B. LEONI, *A proposito*, cit., p. 227.

²² B. LEONI, *A proposito*, cit., p. 230.

²³ B. LEONI, *A proposito*, cit., p. 230. A few lines after this, Leoni references Ernst Cassirer’s *The Myth of the State* (1946).

²⁴ B. LEONI, *A proposito*, cit., p. 229.

²⁵ B. LEONI, *A proposito*, cit., p. 227.

²⁶ B. LEONI, *A proposito*, cit., p. 228.

²⁷ As he recalls in a footnote, Leoni published in 1950 a long review of Hayek’s book, where he stresses the theme of Hayek’s individualism in relation to his philosophy of the social sciences. See B. LEONI, *Recensione di F. A. Hayek*, *Individualism and Economic Order*, in “L’Industria”, n. 1, 1950, pp. 145-157.

²⁸ See A. MASALA, *Leoni, Hayek, and “Il Politico”*, in “Il Politico”, n. 2, 2022, pp. 5-22 (pp. 6-8).

²⁹ Mises’ influence on Leoni is explored in C. LOTTIERI, *Le ragioni del diritto. Libertà individuale e ordine giuridico nel pensiero di Bruno Leoni*, Soveria Mannelli-Treviglio, Rubbettino-Leonardo Facco, 2006. Mises’ praxeology also makes an appearance later in Leoni’s paper, in the discussion about the means-ends relationship in government activity, see B. LEONI, *A proposito*, cit., p. 234.

³⁰ B. LEONI, *A proposito*, cit., p. 229.

lation. His main disagreement is with Griziotti's idea that the public economy "is characterized [...] by an almost unlimited abundance of resources", while ordinary private activity is constrained "by the scarcity of present means available to individuals"³¹. Leoni objects that the notion of scarcity cannot be conceived in absolute terms, that is, by abstracting from the specific set of ends to be satisfied³². Griziotti is right to point out that the magnitude of public investment often exceeds any private counterpart, but this is not enough to establish that the purposes of the state are altogether of a special quality. Indeed, any discussion about the content of ends is beyond the reach of economic science, which, in the Mises-Robbins tradition, focuses on the instrumental aspect of human action³³. Nor is the argument of coercion as the political 'jack of all trades' conclusive. Coercion cannot solve the problem of scarcity because "it does not itself produce wealth, but it just facilitates the acquisition of wealth produced by other means". Above all, "it implies a certain cost", since it could "hamper or hinder the production of goods" in the private market³⁴. The coercive extraction of wealth, Leoni concludes, is limited on the one hand "by the *productive capacities* of citizens and", on the other, "by their *consent*. A constraint which is without doubt, albeit in a loose sense, *economic*"³⁵. Again, Griziotti's error stems from his conception of the state as "a subject of actions and moral judgement"³⁶, while actually collective action is nothing but "the reality of individuals acting in concert, and of the countless forms and conditions of their association"³⁷.

³¹ B. LEONI, *A proposito*, cit., p. 233.

³² See B. LEONI, *A proposito*, cit., pp. 234-235.

³³ B. LEONI, *A proposito*, cit., p. 234.

³⁴ B. LEONI, *A proposito*, cit., p. 237.

³⁵ B. LEONI, *A proposito*, cit., p. 238 (unless indicated, italics are in the original).

³⁶ B. LEONI, *A proposito*, cit., p. 238.

³⁷ B. LEONI, *A proposito*, cit., p. 237. Here it is useful to recall that Leoni was not the only Italian scholar to criticize Griziotti's position in these terms. Another notable case is that of Luigi Einaudi, who would later become a reference point also for Buchanan as "the most distinguished follower of de Viti de Marco in [the] cooperative or democratic tradition" (J.M. BUCHANAN, "La Scienza delle Finanze": *The Italian Tradition in Fiscal Theory*, in *Fiscal Theory and Political Economy*, Chapel Hill, The University of North Carolina Press, 1960, pp. 24-75, on p. 36). Einaudi felt that Griziotti's attempt to ground the theory of government finance on dogmatic jurisprudence discounted the economic basis of the discipline, mistaking the formal structure of law for the empirical reality of social processes.

Just one year before Leoni's article, Buchanan published his seminal essay *The Pure Theory of Government Finance: A Suggested Approach* (1949). Here, Buchanan argues that a great deal of clarity could be brought to public economics by making explicit the alternative "theories of the state" that underlie different "framework[s] for the pure theory of government finance"³⁸. He recognizes two general models, the first being the "organismic theory". In this perspective, "the state is considered as a single decision-making unit acting for society as a whole"³⁹, or as a "fiscal brain"⁴⁰, that "seeks to maximize some conceptually quantifiable magnitude", such as "social utility"⁴¹. As Richard Wagner explains, Buchanan is portraying the mainstream position that dominated English fiscal theory at the time, an offspring of Utilitarian philosophy. Its main representatives, like Francis Y. Edgeworth and Arthur C. Pigou, thought of the government as an impartial equilibrating force, exploiting tendencies like the decreasing marginal utility of income to smooth out individual levels of satisfaction and reach a higher aggregate social welfare⁴².

For Buchanan, this framework did not give enough importance to individuals as active participants in the political and economic process. That is why in the essay he turns to the "individualist" or "democratic" paradigm, in which (fiscal) institutions are the endogenous product of "the desires of individuals to fulfill a certain portion of their wants collectively"⁴³. Conversely, individual preferences work as a constraint on the expansion of government activity⁴⁴. The latter is considered productive only if it succeeds in establishing a kind of "*quid pro quo*"⁴⁵ (exchange) relationship between the demand for public goods at the micro level and the services provided⁴⁶. Although some measure of abstraction

See D. FAUSTO, *La polemica sull'unità disciplinare tra scienza delle finanze e diritto finanziario*, in "Quaderni di Economia Politica", vol. VIII, n. 2-3, 1990, pp. 223-260.

³⁸ J.M. BUCHANAN, *The Pure Theory of Government Finance: A Suggested Approach*, in "Journal of Political Economy", vol. 57, n. 6, 1949, pp. 496-505 (p. 496).

³⁹ J.M. BUCHANAN, *The Pure Theory*, cit., p. 496.

⁴⁰ J.M. BUCHANAN, *The Pure Theory*, cit., p. 497.

⁴¹ J.M. BUCHANAN, *The Pure Theory*, cit., p. 497.

⁴² See R.E. WAGNER, *James M. Buchanan and Liberal Political Economy: A Rational Reconstruction*, Lanham, Lexington Books, 2017, pp. 28-31.

⁴³ J.M. BUCHANAN, *The Pure Theory*, cit., p. 498.

⁴⁴ See J.M. BUCHANAN, *The Pure Theory*, cit., p. 498.

⁴⁵ J.M. BUCHANAN, *The Pure Theory*, cit., p. 499.

⁴⁶ J.M. BUCHANAN, *The Pure Theory*, cit., p. 498.

from individual wants is always required⁴⁷ – otherwise we wouldn't be dealing with *collective* action – it must be acknowledged that public goods have differential effects: these variables are behind the success or failure of institutional arrangements. Buchanan does not mention Griziotti, but de Viti de Marco appears in the essay, alongside Wicksell and Lindahl, as a champion of the “benefit theory of taxation”⁴⁸, and it is probably de Viti de Marco who is to be considered the main influence for the organismic/individualist dichotomy. As we have seen, these are the same authors that Griziotti criticizes.

The similarities between Buchanan and Leoni are striking, both on the broader conceptual level and in the choice of key terms. The comparative analysis I have undertaken reveals a deep philosophical synergy, which becomes even more evident when instantiated in the same field of inquiry – the theory of public finance. First, both thinkers emphasize methodological issues and share an underlying intention to formulate a comprehensive framework for the social sciences⁴⁹. Furthermore, Buchanan and Leoni postulate the same opposition between organicism and individualism, with a clear preference for the second alternative. On the side of positive theory, they find the organicist model unable to account for the economic structure of society, which consists of individuals who make decisions about how to employ their resources and actively react to policy changes. Buchanan and Leoni, moreover, share a sense of uneasiness about the potentially paternalistic or authoritarian consequences of organicism, as the latter inherently shifts the focus from the individual as the primary “source of value”⁵⁰ to the *ens fictum* of the collectivity, thus weakening the priority of liberty that informs the classical liberal worldview. This background

⁴⁷ See. J.M. BUCHANAN, *The Pure Theory*, cit., p. 499.

⁴⁸ J.M. BUCHANAN, *The Pure Theory*, cit., pp. 499-500.

⁴⁹ As Forte explains, this idea was also shared by Griziotti. Forte argues that interpreting Griziotti exclusively as an organicist is “inappropriate”, since his “political approach [...] moved from the conflicting interests of the different members of society”, F. FORTE, *Buchanan's Public Choice Enterprise*, cit., p. 71. Forte's reading may be close to how Griziotti understood himself, as shown in his response to Leoni's critique. See B. GRIZIOTTI, *Replica*, in “Rivista di Diritto Finanziario e Scienza delle Finanze”, vol. IX, n. 3, 1950, pp. 240-242.

⁵⁰ An expression that Buchanan will use frequently in later writings, see e.g. G. BRENNAN, J.M. BUCHANAN, *The Reason of Rules: Constitutional Political Economy*, Indianapolis, Liberty Fund, 2000, pp. 26, 30.

line of agreement will hold throughout their academic relationship, even in the face of emerging disagreements.

3. *The economics of politics: group decisions, power, and disequilibrium*

By and large, Leoni's efforts in the late 1950s and early 1960s were devoted to developing a new framework for political and legal theory. He grew increasingly dissatisfied with the mainstream approaches of his time because he felt that they lacked two of the fundamental features that a scientific social theory should have: a value-free perspective, which Leoni cherished in Max Weber's writings, and a parsimonious social ontology, which was provided by Mises and Hayek⁵¹. Then, Leoni discovered that a group of like-minded scholars, mainly from the field of economics in the United States, were trying to articulate the same project: Kenneth Arrow, Duncan Black, Anthony Downs, and, last but not least, Buchanan and Tullock. In their works, Leoni found a pioneering methodological reflection, with crucial implications for abstract theory, as well as for the study of institutions, pressure groups, parties, and so on⁵².

The evolution of Leoni's political theory has been divided into two different stages: the first one is dominated by the emphasis on the cleavage between market and political choices, emphasizing the element of coercion in the latter; the second, on the other hand, appears more open to some kind of 'constitutional' theory, treating power as an object of exchange⁵³. Since this partition is useful for the purposes of this paper, I will follow it in the structure of this section and the next.

Leoni's first extensive treatment of the economic approach, and, with that, his first mention of Buchanan, is found in chapters 9-11 of his 1957 *Lezioni di dottrina dello Stato* (*Lectures on the Doctrine of*

⁵¹ See B. LEONI, *Il problema metodologico nelle scienze sociali*, in "Il Politico", n. 3, 1952, pp. 350-358.

⁵² In a 1960 report, Leoni laments the sorry state of Italian political science in these areas of research, see B. LEONI, *Un bilancio lamentevole: il sotto-sviluppo della scienza politica in Italia*, in "Il Politico", n. 2, 1960, pp. 31-41 (p.33).

⁵³ This reading is proposed in A. MASALA, *Il liberalismo di Bruno Leoni*, cit., ch. 5.

⁵⁴ Leoni's lecture notes were first "collected [...]" by two of his students, Franca Boschis and Gabriella Spagna, and subsequently published in mimeographed form in

the State)⁵⁴. The ideas of these lectures also appear in a more condensed form in *Natura e significato delle “decisioni politiche”* (*The Meaning of ‘Political’ in Political Decisions*), an essay Leoni published in the same year, first in Italian in *Il Politico*, and then in English in *Political Studies*⁵⁵. While the latter piece is undoubtedly the more polished one, in the current section I will mainly reference the lectures, as they give us more insight into the articulation of Leoni’s reasoning⁵⁶. They are especially helpful because they clarify *why* Leoni came to adopt the economic approach and *how* he interpreted its assumptions.

Leoni’s goal in the lectures is to formulate a general definition of politics, which leads him to wrestle with several competing paradigms. After restating his critique of the organicist theory (where Griziotti is discussed again, alongside the German tradition of *Staatslehre*)⁵⁷, together with a refutation of Thomas D. Weldon’s linguistic theory, Leoni expresses a preference for power-centered perspectives, as they are considered more in line with the sociological reality of politics. However, power relations can be subsumed under a broader category: instrumental decision-making. By extension, the whole “theory of politics is nothing more than a subspecies of the theory of end-driven decisions”⁵⁸, whose requirements of individual rationality are both descriptive and prescriptive⁵⁹.

Leoni points out, however, that not all concepts belonging to economics can be used in political theory. The main problems arise when one tries to apply the notion of equilibrium to political decisions – and especially to democratic ones – as Black had done in his 1950 essay *The Unity of Political and Economic Science*. According to Black, just as the market coordinates individual preference rankings through the price mechanism and progressive adjustments of supply and demand, political

1957”, L. INFANTINO, R. DE MUCCI, *Prefazione*, in B. LEONI, “Lezioni di dottrina dello Stato”, Soveria Mannelli, Rubbettino, 2004, pp. 5-41 (pp. 5-6).

⁵⁵ *The Meaning of ‘Political’ in Political Decisions*, in “Political Studies”, vol. V, n. 3, 1957, pp. 225-239.

⁵⁶ Moreover, while the essay is available in translation, the lectures are not, making them less accessible to the English audience.

⁵⁷ See B. LEONI, *Lezioni*, cit., pp. 75-80.

⁵⁸ B. LEONI, *Lezioni*, cit., p. 181.

⁵⁹ See B. LEONI, *Lezioni*, cit., pp. 183-184, where John von Neumann and Oskar Morgenstern are mentioned.

systems achieve equilibrium through their electoral procedures⁶⁰. Leoni argues that this is a false analogy because it fails to account for the *collective* nature of political decisions⁶¹. The latter are classified as “group decisions”, that is, decisions which are made by a subset of individuals in the community but are “*applied to the group as a whole*” and are “interpreted as [...] decisions made by the group as a whole”⁶².

What distinguishes political decisions is the lack of consistency between their premises, represented by the preference rankings of the agents involved, and their outcome, that is, the fulfillment of those preferences. Whereas bilateral market interactions are capable of satisfying the needs of both parties (at least *ex ante*), since trade doesn’t take place without a double coincidence of wants, political decisions “are of the ‘all of nothing’ kind”⁶³: everyone casts their vote, but only one set of preferences will be reflected in the final outcome. Politics is then inherently coercive because it embodies an imbalance in relative power, where ‘power’ is defined as “*the possibility of identifying one’s own choice with the choice of the group*”⁶⁴. Where there are clear winners and losers there can be no such thing as “equilibrium”, but only different situations of “disequilibrium” that can be made more or less rigid depending on the decision rule adopted by the group⁶⁵.

Leoni also criticizes the attempt to rationalize power relations through the use of procedures. “*A procedure is nothing more than the method, or the set of methods, by which a certain decision is accorded a privileged status*”⁶⁶; it does not owe its existence to logical necessity, but only to reasons of expediency – the need to reach a collective decision in the absence of unanimity. Although agreement on the necessity of collective choices could be considered a form of equilibrium, Leoni concludes that even the selection of procedures is a matter of power and coercion: “*decisions regarding procedures are political par excellence, as it is through procedures that decisions which determine power rela-*

⁶⁰ See D. BLACK, *The Unity of Political and Economic Science*, in “The Economic Journal”, vol. 60, n. 239, 1950, pp. 506-514.

⁶¹ See B. LEONI, *Lezioni*, cit., p. 219.

⁶² B. LEONI, *Lezioni*, cit., p. 214.

⁶³ B. LEONI, *Lezioni*, cit., p. 229.

⁶⁴ B. LEONI, *Lezioni*, cit., p. 241.

⁶⁵ See B. LEONI, *Lezioni*, cit., pp. 234, 263.

⁶⁶ B. LEONI, *Lezioni*, cit., p. 252.

tions are made”⁶⁷. In Leoni’s view, then, the political group “*originates from some kind of violence*”⁶⁸, and the state is nothing more than “*the situation of power or powers which are at work at a given time in a community, the latter being understood as a constellation of groups*”⁶⁹.

Leoni’s published lectures belong to the 1956-57 academic year, but the concepts expressed in them can be traced back to at least 1953. As he states in *The Meaning of ‘Political’ in Political Decisions*, he later discovered that Buchanan had developed similar ideas about the differences between the market and politics in his *Individual Choice in Voting and the Market* (1954)⁷⁰. Leoni and Buchanan share three main arguments. (1) Political decisions are characterized by Knightian uncertainty, because “in market choices the individual is the acting or choosing entity, as well as the entity for which choices are made”, whereas in politics “the collectivity is the entity for which decisions are made”. Therefore, the individual is incapable of assigning probability indexes to possible outcomes⁷¹. (2) The alternatives presented in political choice are “mutually exclusive”, while in the market “alternatives [...] conflict only in the sense that the law of diminishing returns is operative”. When acting as consumers, individuals can plan their expenditures to buy different quantities of individual goods, with a clear idea of the trade-offs they are willing to make⁷²; in Leoni’s terms, market choices, unlike political ones, can be “articulated”⁷³. (3) Politics is marked by coercion. On the contrary, as both Buchanan and Leoni state with reference to Mises’ *Human Action*, “a dollar vote is never overruled; the individual is never placed in the position of a dissenting minority”⁷⁴.

Now, while Buchanan and Leoni are aligned on these points, there is a difference in the way they interpret them. We know that Buchanan

⁶⁷ B. LEONI, *Lezioni*, cit., p. 245-246.

⁶⁸ B. LEONI, *Lezioni*, cit., p. 258.

⁶⁹ B. LEONI, *Lezioni*, cit., p. 242-243.

⁷⁰ See B. LEONI, *The Meaning of ‘Political’ in Political Decisions*, cit., pp. 234-235, quoted in A. MASALA, *Il liberalismo di Bruno Leoni*, cit., p. 163, n. 50.

⁷¹ J.M. BUCHANAN, *Individual Choice in Voting and the Market*, in “Journal of Political Economy”, vol. 62, n. 4, 1954, pp. 334-343 (p. 335); see B. LEONI, *Lezioni*, cit., pp. 224, 226.

⁷² J.M. BUCHANAN, *Individual Choice*, cit., p. 338.

⁷³ B. LEONI, *Lezioni*, cit., pp. 228-229.

⁷⁴ J.M. BUCHANAN, *Individual Choice*, cit., p. 339; B. LEONI, *Lezioni*, cit., p. 231.

wrote *Individual Choice in Voting and the Market* as a follow-up to his review of Arrow's *Social Choice and Individual Values* (1951), titled *Social Choice, Democracy, and Free Markets* (1954). Buchanan did not take issue with Arrow's proof of the impossibility theorem on the strictly logical level, but he questioned the way in which social processes were conceptualized in the book. Arrow started from the assumption that democracy (and the market) were to be judged for their ability to produce rational social outcomes from individual preferences, i.e., outcomes which satisfied a whole set of conditions (non-dictatorship, transitivity, etc.). To Buchanan this view was rather narrow, as it implied that individuals approached democracy with an exclusive concern for rationality in one-shot results. On the contrary, the strength of democracy lay in its dynamic performance, as it allowed people to experiment with different alternative solutions over time⁷⁵.

It is in this light that one should read *Individual Choice in Voting and the Market*. While Buchanan stresses the higher consistency between plans and outcomes in market settings, his is by no means an indictment of democracy⁷⁶. Buchanan understands that people may accept to undergo some degree of coercion because collective action balances the power differentials present in the market and gives individuals a greater sense of participation⁷⁷. In *The Meaning of 'Political' in Political Decisions*, Leoni accepts Buchanan's latter argument, along with his ideas about the experimental or "tentative" nature of the democratic process⁷⁸. However, he still compares the market and politics only along two dimensions: rationality vs. irrationality and freedom vs. coercion. He thus seems to fall back on the Arrowian mistake as described by Buchanan. In Leoni's eyes, procedures are weak legitimizing mechanisms used to cloak "hegemonic relationships", whereas Buchanan looks at them as equally grounded on the individuals' genuine attempt to articulate their own plans of life in the social world. Rather than being stark opposites, the market and politics are different expressions of the same cooperative venture⁷⁹.

⁷⁵ See J.M. BUCHANAN, *Social Choice, Democracy, and Free Markets*, in "Journal of Political Economy", vol. 62, n.2, pp. 114-123 (pp. 120-121).

⁷⁶ A similar point is made in P.J. BOETTKE, P.T. LEESON, *Hayek, Arrow, and the Problems of Democratic Decision-Making*, in "Journal of Public Finance and Public Choice", vol. XX, n. 1, 2002, pp. 9-21.

⁷⁷ See J.M. BUCHANAN, *Individual Choice*, cit., pp. 335-336; 340.

⁷⁸ B. LEONI, *The Meaning of 'Political' in Political Decisions*, cit., pp. 237-238.

Further evidence for this interpretation can be found near the end of Leoni's lectures, where he argues against the voluntary exchange theory of taxation, i.e., one of the pillars of Buchanan's welfare economics. There is no reference to Buchanan here, and it's equally possible that Leoni had someone like de Viti de Marco in mind when formulating his objections (moreover, we are not sure that he had even come across Buchanan's *Pure Theory*). Nevertheless, the effect of Leoni's words remains unchanged.

"In the domain of public economics [*scienza delle finanze*], many theories have tried to justify taxation under the rubric of "*do ut des*", that is, as the payment for a service, and in particular for those indivisible services which cannot be supplied in discrete units to specific individuals, but have to be provided to the collectivity as a whole, and don't allow for targeted individual contributions, but demand that everyone pays, since everyone benefits from them. These theories have stated a principle with which we could agree in terms of political ideology. However, they do not penetrate into the true nature of the fiscal relationship, since a levy [*imposta*] is, by name, something that is forcibly "levied" on people [*"imposto"*]"⁸⁰.

This statement is indeed puzzling. For one thing, how can we reconcile it with Leoni's criticism of Griziotti, which instead seemed so much in line with Buchanan's perspective? One answer can be given by turning to Buchanan's "*La scienza delle finanze*": *The Italian Tradition in Fiscal Theory* (1960). Overall, Buchanan saw the Italian school as a valuable alternative to the Utilitarian-cum-benevolent despot model of the English tradition. However, he also identified in it two separate strands, both individualist in their methodology but with diverging accounts of collective choice. On the one hand, there was the de Viti de Marco line, which emphasized the link between democratic politics and voluntary exchange, while, on the other, thinkers like Vilfredo Pareto and Amilcare Puviani used the theory of *élites* to argue that fiscal structures were arbitrarily designed by the ruling classes to extract resources from the oppressed majority⁸¹. Leoni seems to fall

⁷⁹ See J.M. BUCHANAN, *Individual Choice*, cit., pp. 341-343.

⁸⁰ B. LEONI, *Lezioni*, cit., pp. 264-265.

⁸¹ J.M. BUCHANAN, "*La Scienza delle Finanze*", cit., pp. 32-33; 60. Buchanan specifies that de Viti de Marco had actually considered both views in developing his theory

squarely into the latter category, and this impression is confirmed by the discussion that surrounds the passage quoted above. Here, Leoni calls political interaction “disproductive”, that is, something that actively harms the losing party by forcing them into a transaction that wouldn’t have taken place otherwise. In this respect, the behavior of the state toward the citizen resembles that of a highwayman toward his victim⁸² – *pace* the benefit theory of taxation.

Of course, it would be an exaggeration to portray Buchanan as the defender of an idealistic conception of democracy *vis-à-vis* Leoni’s realism (and, on the other hand, to look at the latter as a rigid theory of class domination). As *The Calculus of Consent* will make clear, Buchanan was well aware that modern democratic systems are populated by organized interest groups that seek short-term gains at the expense of everyone else. However, he also believed that power, coercion, and hegemony were not enough to explain why people consistently agreed to engage in collective action. If politics were really the realm of disproductive relationships and nothing else, societies would collapse under the weight of the costs of coercion. On the contrary, Buchanan looked at politics as a form of trade, however imperfect. Public goods *did* have a differential impact on individuals, and the latter expected to benefit in return for their contributions. In this context, the role of the normative economist was to devise institutional structures that could allow for a better expression of individual preferences for collective goods, rather than resorting to top-down action⁸³.

of public finance: ‘pure democracy’ and ‘pure state monopoly/absolutism’ are ideal-types which are always mixed in existing states. The first formulation of this “basic dualism” is attributed by Buchanan to Francesco Ferrara, see J.M. BUCHANAN, “*La Scienza delle Finanze*”, cit., pp. 29; 34-35.

⁸² See B. LEONI, *Lezioni di dottrina dello Stato*, cit., pp. 262, 268, 270. In this context Leoni also criticizes the very concept of “market power” in such instances as firm monopolies; it has been noted that his arguments are reminiscent of those put forward by radical libertarians such as Murray N. Rothbard, see C. LOTTIERI, *Le ragioni del diritto*, cit., pp. 183-191. For a comparison between Leoni and ruling class theories see also R.A. MODUGNO, *Bruno Leoni and Friedrich von Hayek on Democracy*, cit., p. 181.

⁸³ This interpretation of Buchanan’s work was recently proposed by A. MARCIANO, *James Buchanan and Peaceful Cooperation*, Cambridge, Cambridge University Press, 2024.

4. *Constitutional theory and vote trading: politics-as-exchange or exchange of power?*

As we recalled, Leoni was part of the restricted group that received the first draft of *The Calculus of Consent* in 1960. Leoni's observations about the book are found in two papers: (1) *Political Decisions and Majority Rule*, a published version of the second lecture Leoni gave at the Thomas Jefferson Center; (2) *The Economic Approach to Politics*, which was first presented at the Annual Conference of the Southern Economic Association in Atlanta, Georgia (17-19 november 1960)⁸⁴. Since the first essay is less comprehensive than the second, with Leoni confining himself to a brief discussion of vote trading, I will rely on the latter as a guide for my exposition and refer to the former when appropriate.

The paper is structured as follows. Leoni begins by pointing out the challenge the economic or individualist approach faces in theorizing about group decisions. He then restates his criticism of Black's notion of equilibrium, once again listing the similarities between his own counter-arguments about individual choice in politics and the market and those proposed by Buchanan. Leoni notes, however, that the case for the market-voting analogy could still be built on firmer ground: the *Calculus'* constitutional perspective (also known as 'politics-as-exchange') represents such an attempt. Although he praises Buchanan and Tullock's work on a general level, Leoni finds fault with three of its core elements: (1) the definition of collective choice, (2) the theory of vote trading, and (3) the case for unanimity rule. I will now examine Leoni's observations more closely, and argue that the dialogue with Buchanan and Tullock marks the beginning of a shift in the way Leoni conceptualizes the relationship between exchange and collective choice. This shift, however, does not erase his earlier theory of power. Rather, it contextualizes it within a new framework.

As far as (1) is concerned, Leoni objects to Buchanan and Tullock's refusal to integrate the concept of power in their model of collective

⁸⁴ See B. LEONI, *Decisioni politiche e regola di maggioranza - Political Decisions and Majority Rule*, in "Il Politico", n. 4, 1960, pp. 711-723 (Italian); 724-733 (English); *L'approccio economicistico allo studio delle scelte politiche - The Economic Approach to Politics*, in "Il Politico", n. 3, 1961, pp. 477-489 (Italian); 490-502 (English). In both cases, the passages I will quote are from the English original.

choice. In chapter 3, they tie the “power-maximizing approach” to the image of a “zero-sum game”, whereas what they term the “economic approach” depicts the individual as a consistent “utility-maximizer” and “does not require that one individual increase his own utility at the expense of other individuals”. In this “positive-sum game” version of “the political process”, power can only be thought of in a really loose sense, as “the ability to command things that are desired by men”⁸⁵.

Now, after reading Leoni’s analysis of political decisions in the 1957 lectures, we should expect a resolute resistance to the very idea of extending the postulate of behavioral homogeneity into a mutual-benefit model of collective action. In fact, later in the text Leoni returns precisely to his identification of politics with the distribution of relative power or with coercion⁸⁶, but not before introducing a new and essential element that changes the general direction of his theory. Leoni says that “there is a sense in which you can *exchange* power as well as you can exchange commodities or services. And the exchange of power may result as well *in maximizing utilities* for the individuals who participate in the exchange”. But there is more, because “a political community starts precisely when this exchange of powers takes place: an exchange which is preliminary to any other, of commodities or of services”⁸⁷. To Leoni, this intuition goes all the way back to Aristotle, in whose *Politics* one can find “an explicit recognition of the profit that both *arkoi*” (those who govern) “and *arkomenoi*” (those who are governed) “derive from combining together” – provided, Leoni adds, that the latter are accorded “some minimum powers” in return⁸⁸.

In other words, Leoni now outlines his own ‘constitutional theory’: the initial exchange of power determines the framework within which all subsequent interaction, both private and collective, will take place. In an essay called *Diritto e politica (Law and Politics)*⁸⁹, also published in 1961, Leoni expands on this theme by describing the state as “the situa-

⁸⁵ J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Indianapolis, Liberty Fund, 1999, p. 23.

⁸⁶ See B. LEONI, *The Economic Approach*, cit., p. 498.

⁸⁷ B. LEONI, *The Economic Approach*, cit., p. 497.

⁸⁸ B. LEONI, *The Economic Approach*, cit., pp. 497-498.

⁸⁹ This connection is also explored in A. MASALA, *Il liberalismo di Bruno Leoni*, cit., p. 170 ff.

tion of situations”, that is, the overarching ordering of powers on which “all other situations that imply a relationship between man and man come to depend”⁹⁰. Accordingly, political power is attributed a new definition: “the possibility of obtaining respect, protection or assurance over the integrity and use of those goods which each individual considers fundamental and indispensable for his own existence”⁹¹. Politics, therefore, must no longer be seen as the world of unilateral hegemonic relations, but as a multifaceted network of reciprocal rights and obligations. The original power exchange “creates a ‘situation’ of security and predictability for individual interaction”⁹².

Of course, it would be too much to attribute this turn in Leoni’s thought solely to his critical engagement with Buchanan and Tullock. Leoni’s ‘mature’ theory of politics is, after all, the logical conclusion of his own conception of law as the interaction of individual claims. As we have seen from the lectures, Leoni thinks that social life is nothing more than the composition of individual *choices*. Every day individuals make decisions and, above all, plans that entail *expectations* about future states of the world. Realizing these expectations, in turn, requires the continued use of resources, on which individuals make a *claim*. Not all claims, however, can be satisfied: to be considered *legal*, a claim must emerge as a stable social convention, and this usually happens when it satisfies the conditions of reciprocity (it embodies a mutual benefit) and generality (it reflects orderly and already prevalent practices in the community)⁹³. This is where the connection to political theory comes in, for Leoni recognizes that a successful claim involves some kind of power over the chosen resource. Therefore, a legal order can emerge only after the initial power structure has been determined through negotiation. Law is dependent on politics (at least in this constitutional sense), and both stem from the same claim-power genus.

Nevertheless, it can be argued that the *Calculus* provided a significant

⁹⁰ B. LEONI, *Diritto e politica*, in *Il diritto come pretesa*, Macerata, Liberilibri, 2004, pp. 5-28 (originally published in “Rivista Internazionale di Filosofia del Diritto”, n. 1, 1961, pp. 89-107), p. 21.

⁹¹ B. LEONI, *Diritto e politica*, cit., p. 25.

⁹² B. LEONI, *Diritto e politica*, cit., p. 24.

⁹³ See B. LEONI, *Diritto e politica*, cit., pp. 5-20. Leoni articulates this theory on many occasions, roughly from 1959 to the end of his life. As an example, see B. LEONI, *Il diritto come pretesa individuale* (1964), in *Il diritto come pretesa*, cit., pp. 119-138.

impulse for the development summarized above. While Leoni will continue to argue that Buchanan and Tullock err in equating power with zero-sum situations⁹⁴, a footnote in the final 1962 version of the *Calculus* (the only time Leoni is quoted in the book, aside from the acknowledgements) reveals a different understanding on their part. To Buchanan and Tullock, Leoni's "'exchange of power' approach seems to have much in common with what we have called the 'economic' approach to politics"⁹⁵, since they take issue only with a power *maximizing* conception of politics – and, given the specular character of power and utility in both models, the difference seems negligible indeed. Moreover, Leoni's idea that interacting claims constitute the fabric of society closely parallels the foundational role that Buchanan and Tullock attribute to reciprocal externalities. Just as with claims, the mere presence of externalities is not sufficient to determine the distribution of rights and corresponding obligations. In true law-and-economics fashion – an approach that owes as much to Leoni as it does to Ronald H. Coase or Richard A. Posner, as Buchanan himself will recognize⁹⁶ – externalities are the point of departure for collective bargaining, with the most relevant among them requiring organized political action⁹⁷.

But why was Leoni so reluctant to acknowledge these similarities? My guess is that Leoni did not agree with how the constitutional moment is depicted in the *Calculus*. While Leoni also recognized the role of uncertainty in decision theory, he may have found Buchanan and Tullock's 'proto-veil of ignorance' contractarian scenario⁹⁸ too abstract, since it assumes away the possibility of radical conflicts of interests. In fact, the phase that would be represented by the original power exchange, that is, the determination of basic rights, is only lightly touched upon in the *Cal-*

⁹⁴ See B. LEONI, *Diritto e politica*, cit., p. 28, n. 8.

⁹⁵ See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent*, cit., p. 24, n. 12.

⁹⁶ See J.M. BUCHANAN, *Good Economics-Bad Law*, in "Virginia Law Review", n.3, 1974, pp. 483-492 (p. 488).

⁹⁷ See A. MARCIANO, *James Buchanan and Peaceful Cooperation*, cit., ch. 6.1.

⁹⁸ See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent*, cit., pp. 36-39. The similarities and differences between the philosophical structures of the *Calculus* and *A Theory of Justice* have been frequently pointed out, see D.M. LEVY, S.J. PEART, *Natural Equals*, cit., pp. 30-39; B. JACKSON, Z. STEMPOWSKA, "A Quite Similar Enterprise ... Interpreted Quite Differently"? *James Buchanan, John Rawls and the Politics of the Social Contract*, in "Modern Intellectual History", 18, 2021, pp. 1-24.

culus, since Buchanan and Tullock focus more on the choice of procedures. This gap will be filled only many years later by Buchanan in *The Limits of Liberty* (1975), whose Hobbesian model explains the emergence of order from prisoner's dilemma situations⁹⁹. Second, Leoni's new definition of political action is never presented in explicit contrast to his first theory. By the end of 1961, *Freedom and the Law* had already been published, and we need only mention the sweeping critique of collective decisions which is presented in that book. It may be that Leoni did not see his exchange of power view as a perfect substitute for equilibrium-based conceptions. A shared acceptance of background 'constitutional' norms could not erase the inherent conflictual nature of procedures and ordinary politics. Collective action still meant disequilibrium.

This interpretation is supported by point (2) in Leoni's discussion: the theory of vote trading. In the first place, Leoni deals with the possibility of logrolling at the stage where rules for social choice are selected. He rightly points out that Buchanan and Tullock "assume, at least implicitly, that no vote trading could reasonably take place at the constitutional stage"¹⁰⁰. No decision rule is yet in effect, and therefore no well-defined list of strategies is available to the players. Most importantly, the veil-like setting is built to hinder both the predictive power of individuals and their ability to picture short-term gains. Leoni, however, chooses a different option: "vote trading would not make any sense" because "the process of finding the rules is a theoretical one", much akin to the emission of a "truth judgement"¹⁰¹. Now, this seems to be a misunderstanding, since Buchanan and Tullock explicitly distance themselves from truth-in-politics conceptions¹⁰². Nonetheless, it is telling of how Leoni perceives the authors' intention: when individual interest are thinned out, the constitutional stage takes the shape of a discussion among rational people, rather than of a bargaining arena.

Leoni's second line of argument takes issue with the hypothesis of logrolling as a tool to achieve Pareto efficient changes. Leoni shows that

⁹⁹ See J.M. BUCHANAN, *The Limits of Liberty: Between Anarchy and Leviathan*, Indianapolis, Liberty Fund, 2000.

¹⁰⁰ B. LEONI, *The Economic Approach*, cit., p. 499.

¹⁰¹ B. LEONI, *The Economic Approach*, cit., p. 499.

¹⁰² See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent*, cit., p. 4.

he understands the nuances in the argument of the *Calculus*, which is basically an attempt to establish the analogy between a market for votes and a market for externalities. However, he argues that the structure of political decisions makes the existence of such a market unlikely. In the first place, “while unsuccessful operators are pushed out of the market and better ones can step in, nothing of the kind happens in the political stage”¹⁰³. There is no real consumer sovereignty in the world of collective choice, and the constant reshuffling of policy proposals has more to do with the struggle for power than with a Hayekian ‘trial and error’ process. Moreover, in order to function, a political market should be perfectly competitive, whereas in reality “vote trading in presence of two mutually exclusive alternatives will be comparable to trading commodities and services in a situation in which oligopoly or oligopsony dominates the market”¹⁰⁴. In other words, whereas Leoni did not explicitly recognize his differences with Buchanan when commenting on *Individual Choice in Voting and the Market*, now, in light of the *Calculus*, he does.

The theory of logrolling is also examined in *Political Decisions and Majority Rule*, but in this context Leoni gives an almost opposite interpretation of it. Here, Leoni is discussing Downs’ case for simple majority rule, later published with the title *In Defense of Majority Voting* (1961)¹⁰⁵. Downs had developed his arguments as a response to Tullock’s *Problems of Majority Voting* (1959), a paper that will reappear as chapter 10 of the *Calculus*¹⁰⁶. According to Tullock, an environment in which collective choices are made by simple majority rule will be dominated by coalitions of rational “maximizers”, rather than by “Kantian” voters who adopt a ‘public interest’ perspective¹⁰⁷. Referring to the manuscript of the *Calculus*, Leoni notes that these coalitions are the equivalent of the “organized minorities” of *élite* theories, and he remarks that, “while trying to reject the *élite* point of view”, Buchanan and Tullock had “turned out to

¹⁰³ B. LEONI, *The Economic Approach*, cit., p. 501.

¹⁰⁴ B. LEONI, *The Economic Approach*, cit., p. 502.

¹⁰⁵ See A. DOWNS, *In Defense of Majority Voting*, in “Journal of Political Economy”, vol. 69, n. 2, 1961, pp. 192-199.

¹⁰⁶ See J. GRANDJEAN, *Gordon Tullock on Majority Voting: The Making of a Conviction*, 2019, HAL Science, available at <https://hal.science/hal-04379626/document> (last checked on 12/05/2025).

¹⁰⁷ G. TULLOCK, *Problems of Majority Voting*, in “Journal of Political Economy”, vol. 67, n. 6, 1959, pp. 571-579 (pp. 574-575).

adopt it rather unconsciously”¹⁰⁸. Furthermore, Leoni highlights the conclusions of Tullock’s model: the logrolling process produces “a continuous overinvestment” of resources in collective action, as it “minorities of shrewd maximizers to get something for nothing”¹⁰⁹.

I would argue that this shift in interpretation is not due to an error on Leoni’s part, but rather to a seeming inconsistency in the structure of the *Calculus*. Leoni’s observations in *The Economic Approach* are obviously formulated with chapters 11-12 in mind, which however are Buchanan’s effort, not Tullock’s¹¹⁰. These chapters present vote trading under a more positive light, almost as a way of overcoming the limitations of “any decision-making rule” in the distribution of gains¹¹¹. Albeit with the constraint of full side payments, this conception is a far cry from the grim “legal war of all against all”¹¹² that the Tullockian take seems to suggest. In any case, it’s clear that Leoni seems to be more in tune with the latter idea than with the former¹¹³.

I now turn to objection (3). Just as with vote trading, Leoni thinks that unanimity or qualified majority rule can only be a pale imitation of the market. Following Wicksell, Buchanan and Tullock make the case for entrusting decisions of paramount importance to qualified voting, as such an arrangement is supposed to protect people from the predatory action of organized groups. Leoni replies that, on the contrary, *any* sufficiently motivated 1% minority could hold in check the other 99%, paralyzing the decision-making process until the maximum possible gains have been secured. The organized minority bargains “in a *much better condition*” and acts as a “discriminating monopolist”¹¹⁴. While Leoni sides with Buchanan and Tullock against Downs on majority rule, the

¹⁰⁸ B. LEONI, *Majority Rule*, cit., p. 729.

¹⁰⁹ B. LEONI, *Majority Rule*, cit., p. 730.

¹¹⁰ See A. MARCIANO, *James Buchanan and Peaceful Cooperation*, cit., pp. 46-47.

¹¹¹ J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent*, cit., p. 190.

¹¹² B. LEONI, *Majority Rule*, cit., p. 730.

¹¹³ To my knowledge, the distance between Buchanan and Tullock’s interpretations of logrolling in the *Calculus* has not been taken into account in the literature, aside from a passing mention in C.E. HEIGHT, A. MARROQUÍN GRANAJÓ, N.G. WENZEL, *The Calculus of Consent: 50th Anniversary*, in “Laissez-Faire”, n. 35, 2011, pp. 83-91 (p. 86). Julien Grandjean compares the two perspectives but concludes that they are consistent in their criticism of majority rule, see J. GRANDJEAN, *James M. Buchanan and Gordon Tullock on the Weaknesses of Majority Voting: A Triptych*, in «Oeconomia», vol. XI, n. 1, 2021, pp. 49-76.

¹¹⁴ B. LEONI, *The Economic Approach*, cit., p. 502.

situation is exactly reversed in this instance. Conversely, Buchanan and Tullock seem to take a Leonian position when they say that unanimity rule should not be interpreted as a mechanism for imposing the will of one over the rest of the community, when in fact it's designed "to prevent external costs from being imposed"¹¹⁵.

Conclusions

In the end, Leoni seems to find no genuine equivalent of market choice in the realm of collective action, at least as far as the attributes of freedom, voluntariness and choice articulation are concerned. How, then, are we to interpret the constitutional theory described above? There are two ways of reading it. The first states that the exchange of power view acquires full meaning only when projected against the so-called 'Leoni model' that is developed in *Freedom and the Law*¹¹⁶. The evolutionary, common law order in which "no individual choice is ever overruled"¹¹⁷ by coercive authority requires the almost complete elimination of collective choices, or their devolution into decentralized, voluntary arrangements. The production of order would be left mostly to jurisprudential activity, with judges being in charge of 'discovering' the law through the analysis of precedents. As Buchanan remarked in a later essay, Leoni's distinction between law and legislation "grew out of a profound, philosophically based conservatism grounded on a sharp functional differentiation". To Leoni, law "is a stabilizing institution which provides the necessary framework within which individuals can plan their own affairs predictably and with minimal external interferences". On the other hand, legislation is aimed at "implementing explicit social or collective objectives", and thus tends to disrupt existing equilibria and introduce uncertainty into the social world¹¹⁸. It has been observed that, especially in later writings, this normative perspective blends too much with Leoni's positive theory, with the risk of depriving the latter of its explanatory

¹¹⁵ J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent*, cit., p. 258.

¹¹⁶ See the contributions by Boettke and Candela and by Zywicki mentioned in footnote 1.

¹¹⁷ B. LEONI, *Freedom and the Law*, Indianapolis, Liberty Fund, 1991, p. 132.

¹¹⁸ J.M. BUCHANAN, *Good Economics-Bad Law*, cit., pp. 488-489.

power¹¹⁹. This is not to say that Buchanan and Tullock's construction does not have normative implications – they explicitly declare it – but these are always embedded in a charitable conception of the function of democratic institutions. Moreover, both Buchanan and Tullock would later express their reservations about the efficiency of common law arrangements. For Buchanan, there is no guarantee that social evolution will achieve better results than active constitutional reform¹²⁰; for Tullock, judges are subject to the same self-interest motives that drive every actor in the social arena¹²¹.

The second option consists in separating as much as possible Leoni the libertarian from Leoni the political theorist. In this case, the exchange of power-*cum*-disequilibrium theory could be conceived of as a sort of 'non contractarian public choice'. This model still retains Buchanan and Tullock's distinction between constitutional and post-constitutional politics, as well as the conception of institutions as predictive frameworks. However, these elements are subsumed under a much more dynamic social ontology, in which conflict, bargaining, and change play a prominent role. Institutions would then be the emergent property of whatever constellation of claims prevails at a given moment. Although this model would allow for the usual arguments about the widespread success of private property and market institutions (properly supported by historical evidence), the latter couldn't be predicted to emerge as if they were the predetermined results of an explicit contract: the overall perspective would be content-neutral¹²². On balance, this might be the most productive interpretation in terms of political theory, correcting some of the most evident naiveties in the contractarian project of the Virginia School and in Leoni's libertarian evolutionism.

¹¹⁹ See M. STOPPINO, *La grande dicotomia diritto privato-diritto pubblico e il pensiero di Bruno Leoni*, in "Il Politico", n.1, 1982, pp. 115-130, quoted in A. MASALA, *Il liberalismo di Bruno Leoni*, cit., p. 182.

¹²⁰ See J.M. BUCHANAN, *The Limits of Liberty*, cit., pp. 210-211. Buchanan's arguments are addressed to Hayek, but they also apply to Leoni.

¹²¹ See G. TULLOCK, *The Case Against the Common Law*, Durham, Carolina Academic Press, 1997.

¹²² For a similar interpretation see A. RICCO, *Bruno Leoni e il conservatorismo*, in "Politica e Società", n. 2, 2016, pp. 255-276, where concepts like Nash bargaining equilibria and John C. Calhoun's concurrent majorities are used to describe Leoni's view. Buchanan's constitutional/post-constitutional distinction is also mentioned. However, Ricca seems to conflate too much Buchanan and Leoni on this point, while I argue for a more cautious comparison.

Riassunto - Il saggio propone un confronto tra le teorie politiche di Bruno Leoni e James M. Buchanan. Il centro della trattazione è costituito dagli scritti degli anni '50 e di inizio anni '60, in cui entrambi i pensatori si dedicano all'elaborazione di una teoria dell'azione collettiva. Dopo una prima sezione (§1) in cui si ricostruisce la storia delle collaborazioni più importanti tra i due pensatori, la trattazione si snoda in tre fasi. Nella prima (§2) si mostra che, già prima di conoscersi, Buchanan e Leoni avevano sviluppato un'identica concezione individualistica delle scienze sociali. Ciò viene osservato in dettaglio confrontando due saggi in cui entrambi si occupano di scienza delle fi-

nanze. In secondo luogo, (§3) si osserva come da tale accordo emergano due visioni divergenti della politica. Sebbene entrambi si concentrino sulle differenze tra mercato e democrazia, Buchanan non ritiene, come invece fa Leoni, che la politica sia basata esclusivamente su asimmetrie di potere. Questa frattura sembra ricomporsi quando Leoni, commentando la prima stesura di *The Calculus of Consent* elabora la propria teoria dello scambio di poteri. Tuttavia, si dimostrerà (§4) che anche con questa modifica la distanza tra Leoni e Buchanan permane, soprattutto per l'adesione di quest'ultimo al paradigma contrattualista, inaccettabile per l'evoluzionismo leoniano.