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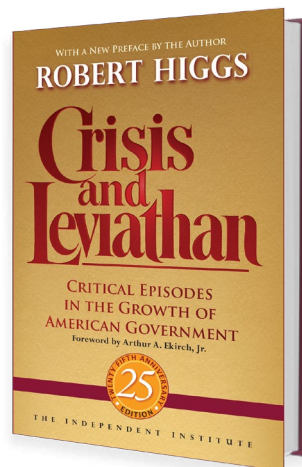
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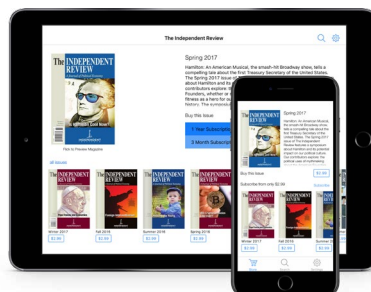
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On the Origins and Goals of Public Choice *Constitutional Conspiracy?*

— ◆ —
MICHAEL C. MUNGER

This essay is a response to the recent book *Democracy in Chains: The Deep History of the Radical Right's Stealth Plan for America* by my Duke University colleague Nancy MacLean, a professor in our distinguished Department of History.

It is, let me say at the outset, a remarkable book.

At first, I misunderstood its method. MacLean has argued persuasively throughout her career for the historical method. For example, in *Debating the American Conservative Movement: 1945 to the Present* (coauthored with Donald T. Critchlow), she writes: “We hope this book will help students learn that the strongest, most tenable positions are arrived at through careful sifting of evidence and respectful encounters with opposing points of view” (Critchlow and MacLean 2009, viii).

So perhaps I can be forgiven for my misunderstanding of her method in *this* book. Early in *Democracy in Chains*, in a preface entitled “A Quiet Deal in Dixie,” MacLean recounts an exchange, a conversation really, between two conservatives. One is the president of a major southern university, the other is an academic worker intent on reverse engineering a repressive sociopolitical order in America, working from the ground up, using shadowy methods and discredited theories.

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The Independent Review, v. 22, n. 3, Winter 2018, ISSN 1086-1653, Copyright © 2018, pp. 359-382.

The academic writes a proposal for a research center where these ideas can be given a pestilential foothold, a source of viral infection hidden in a legitimate academic setting. The goal, as MacLean tells of the exchange, is to begin a Fabian war to reestablish a repressive, plutocratic society ruled by oligarchs. MacLean has actually examined the founding documents, the letters in this exchange, and cites the shadowy academic as saying, “*I can fight this [democracy]. . . . I want to fight this*” (p. xv, emphasis in MacLean’s original).

In his proposal, the professor expands on the theme, which I quote directly from *Democracy in Chains*: “*Find the resources*, he proposed to [the university president], *for me to create a new center on the campus of the University . . . and I will use this center to create a new school of political economy and social philosophy*” (p. xv, emphasis in MacLean’s original). Wow! That’s pretty big stuff.

Except . . . there’s something odd. The italicized text in the quotations is written in the first person and is also italicized in MacLean’s book. But the italicized passage is not placed within quotation marks there, and there’s no footnoted source citation.

I was curious about both omissions, so I tracked down the founding documents themselves: “Working Papers for Internal Discussion Only—General Aims” (1959) and “The Jefferson Center for Studies in Political Economy and Social Philosophy” (1956) (both in Special Collections, University of Virginia Library, Charlottesville). And it turns out that the reason there are no quotation marks and no footnote is that this exchange, in particular the first-person italicized portion, never took place. It’s not a quote. No, seriously: *It’s not a quote*. It’s made up. Fabricated. Fictional.

MacLean, to her credit, never *claims* it is a quote, although a careless reader could be excused for thinking it is, given the first-person voice and the italics. Once I realized that this was the approach, the larger point became clear: *Democracy in Chains* is a work of speculative historical fiction. There is considerable research underpinning the speculation, and because MacLean is careful about footnoting only things that actually did happen, she cannot be charged with fabricating *facts*. But most of the book and all of its substantive conclusions are idiosyncratic interpretations of the facts that she selects from a much larger record, as is common in the speculative-history genre. There is nothing wrong about speculation, of course, but there is nothing persuasive about it, either, in terms of drawing reliable conclusions about history.

The reason that *Democracy in Chains* is remarkable is that it is *such* a great story. The evil mastermind of the secretive “public-choice” movement, James M. Buchanan, was the winner of the Nobel Prize in Economic Sciences in 1986. MacLean is able to decode the true meaning of his bland, academicese writings, after which Buchanan achieves the status of a Bond villain. Buchanan sought nothing less than to bring down the America we all love and replace it with a plutocracy. The account is rendered plausible by MacLean’s excellence as a writer.

The problem with history, of course, is that many narratives about a few cherry-picked events and documents are “plausible.” The task of the historian is to try to distinguish among plausible accounts “through careful sifting of evidence and respectful

encounters with opposing points of view.” There is none of that here. Even a casual familiarity with the basic facts of James Buchanan’s life and scholarship and of the growth and success of the public-choice movement, reveal far simpler and more likely explanations.

MacLean violates a fundamental principle of historical and philosophical biography: the principle of charity, which, according to the esteemed philosopher Simon Blackburn, requires that the analyst “maximize the truth or rationality in the subject’s sayings” (2016, 62). There are several versions of this principle, analogous to Occam’s Razor in the sciences. The principle of charity requires that you take the claims, words, and arguments of a subject at face value unless there is compelling direct evidence to the contrary.

So when Buchanan said he wanted to establish a center (quoting now from the actual founding document of the Jefferson Center at the University of Virginia) “to preserve a social order built on individual liberty, and . . . as an educational undertaking in which students will be encouraged to view the organizational problems of society as a fusion of technical and philosophical issues,” the researcher should not call this statement “code” and infer a desire for racial segregation. The words might just mean what they say.

But decoding and paraphrasing, rather than charitable quoting, is the organon of MacLean’s book. Not of her other work, however, which as I have said is admirably academic and careful. Just this book. She examined some documents from the Buchanan archives, which by her own account (pp. xvii–xx) were so poorly organized that no systematic review was possible.

MacLean must have decided a systematic review wasn’t necessary because she found what she needed. For example, on page 66 of *Democracy in Chains*, we learn of the attempt by segregationist forces to support school vouchers. MacLean says, “The economists made their case in the race-neutral, value-free language of their discipline, offering what they depicted as a strictly economic argument—on ‘matters of fact, not values.’” MacLean quotes nothing that would support the claim that Buchanan advocated vouchers for the purpose of achieving segregation.

The problem is that this view does not withstand even minor scrutiny as an actual account of Buchanan or public choice. Buchanan’s support for vouchers and for school choice arose from a deeply held concern for individual liberty. In fact, because the theme of *Democracy in Chains* is that Buchanan *opposed* majority will, the example of desegregation seems an odd choice for MacLean to emphasize.

The reason that it is odd for MacLean to accuse Buchanan of preferring segregation is that he was very explicitly worried about the possible segregating effects of vouchers. In a famous letter written to Arthur Seldon of the Institute for Economic Affairs in 1984, Buchanan said:

Given the state monopoly as it exists, I surely support the introduction of vouchers. And I do support the state financing of vouchers from general tax

revenues. However, although I know the evils of state monopoly, *I would also want, somehow, to avoid the evils of race-class-cultural segregation that an unregulated voucher scheme might introduce. In principle, there is, after all, much in the "melting pot" notion of America. And there is also some merit in the notion that the education of all children should be a commonly shared experience in terms of basic curriculum, etc. We should not want a voucher scheme to reintroduce the elite that qualified for membership only because they have taken Latin and Greek classics.* Ideally, and in principle, it should be possible to secure the beneficial effects of competition, in providing education, via voucher support, and at the same time to secure the potential benefits of commonly shared experiences, including exposure to other races, classes and cultures. In practise, we may not be able to accomplish the latter at all. But my main point is, I guess, to warn against dismissing the comprehensive school arguments out of hand too readily.¹

Further, and more substantively, it was *desegregation* that was imposed, at the point of a bayonet, *at the command of an antimajoritarian institution*, the Supreme Court. The electoral majority in Arkansas, in rural Florida where I grew up, and in much of the South strongly preferred a repressive apartheid society where African Americans were denied the basic rights guaranteed to all U.S. citizens.

How might MacLean justify occupation by federal troops and forcible desegregation against the express will of democratic majorities? It's easy: forcible desegregation was justified because segregation had itself been achieved by force—the illegitimate force of majorities! Jim Crow was a majority-rule policy. The Constitution or at least the Bill of Rights and Amendments 13–15 exist precisely to *suppress* the murderous and racist impulses of majorities.

Of course, this leaves us to argue about which impulses of majorities pass constitutional muster and which must be forcibly suppressed, as in Little Rock, by heavily armed troops. That seems like an important debate. MacLean may disagree with Buchanan's position, and that disagreement would be useful. But MacLean's core claim throughout the book is that majorities are always right. But it was *Brown v. Board of Education* (347 U.S. 483 [1954]), not "majorities," that sparked school desegregation.

Buchanan's work certainly did have a perspective. He opposed state monopoly of education, but he was certainly not opposed to state participation in education. In fact, in the very essay MacLean cites, "The Economics of Universal Education," we can find this statement: "The case for universal education is self-evident: a democracy cannot function without an informed and educated citizenry. . . . If education is to be universal, compulsion must be exercised by government—that is, by the collective organ of society—since some parents might choose to keep their children out of school. For

1. James Buchanan to Arthur Seldon, 1984, Institute for Economic Affairs Archive, Box 162.2, Folder ID: "Vouchers . . . Correspondence Buchanan," emphasis added, Hoover Institution, Stanford, Calif.

similar reasons, minimum standards of education must be determined by government. Otherwise, the requirement of education is empty and meaningless.”²

The principle of charity would require at a minimum that a scholar not attribute a set of evil motives to fit an ideologically motivated narrative. In this case, Buchanan clearly stated that he *avored* state regulation and financing of education. In fact, he favored something that might surprise many observers: a confiscatory estate tax (Brennan and Munger 2014, 337). MacLean’s description is more than uncharitable; it is grossly inaccurate.

However, and to her credit, MacLean has discovered a number of important documents from the history of public choice and other aspects of the history of the 1960s and 1970s in academic economic circles. There is a terrific example on pages 115–17, where she documents Buchanan’s and others’ glee about their conspiracy as they gathered around a roaring fire in the remote mountains of Virginia. Buchanan said that what the cause needed was to “create, support, and activate an effective counter-intelligentsia” to begin to change “the way people think about government.”

But some nuance is in order. I can imagine Buchanan saying just those things, and everyone present laughing at his sarcastic use of Marxist language and imagery. But notice that there was no swearing to secrecy; there was no claim that the goals of the movement should be hidden. In fact, Buchanan actually said, “If a history of the . . . movement is ever written, it can talk about origins in a log cabin deep in the Virginia mountains.” Friends, MacLean has in fact written that history, using easily available public documents that no one has made any effort to disguise or destroy.

This wasn’t a conspiracy; like anyone trying to establish an academic “school,” Buchanan very much hoped that the movement would sweep the nation and the world. Another of my Duke colleagues, Fredric Jameson, used similar language:

I happen to think that no real systemic change in this country will be possible without the minimal first step of the achievement of a social democratic movement; and in my opinion even that first step will not be possible without two other preconditions (which are essentially the same thing): namely the creation of a Marxist intelligentsia, and that of a Marxist culture, a Marxist intellectual presence, which is to say, the legitimation of Marxist discourse as that of a “realistic” social and political alternative in a country which (unlike most of the other countries in the world) has never recognized it as such. (1982, 75)

If you think that the current system is bad and getting worse, then you hope to start a movement. That movement is likely to be accelerated by (1) the existence of an educated cadre and (2) the legitimation of that sort of discourse, so that it is

2. James Buchanan and Warren Nutter, “The Economics of Universal Education,” unpublished monograph (1959), 1, Buchanan House Archives, Lancaster, Pa.

academically acceptable to have such discussions. So although Buchanan and Jameson disagreed about almost everything else, they agreed about what was required for changing society in the direction that they honestly thought would be useful for society.

An Alternative Plausible Interpretation

I am, in important ways, handicapped here when it comes to speculating. I actually *know* a great deal about public choice as an academic discipline, and I have more than thirty years' experience in working with James Buchanan's body of written research. My background sharply restricts the set of plausible, interesting accounts I can give of the subject because I am constrained by in-depth knowledge of it.

In fairness, then, and in the interests of full disclosure, I should note some issues.

1. James Buchanan was a friend of mine, and I am a great admirer of his academic work. I have written several papers extending and critiquing his work.
2. Buchanan was not a racist. He did not favor the disenfranchisement of groups, and he was very much worried about the use of military and police power to repress citizen voices. Buchanan's main concern is what philosophers call "political authority," or moral justification for the use of violence against citizens and foreigners. Against the backdrop of the events of the 1960s, this concern puts him not on the fringes but well in the mainstream of American liberalism.
3. My book *Choosing in Groups* (Munger and Munger 2015) is a transparently and self-consciously Buchananite undertaking.
4. I have myself received grants from the Charles Koch Foundation, though I have never been paid any of my salary or research funding from them. In particular, I have run a summer session covering the works of James Buchanan, for which the Koch Foundation paid.
5. Much of my own academic standing and reputation rests on the success and vitality of the public-choice enterprise. In fact, I am a past president (1996–98) of the Public Choice Society, an academic society with members from twenty countries, which Buchanan helped found and in which he actively participated until the time of his death in January 2013.
6. Finally, I have in some small way contributed to the direction and vetting of what "public choice" is, having served as an editor of the journal *Public Choice* (2005–10).

In short, then, the reader should be aware that I have a stake in the academic respectability of Buchanan's work and of the public-choice movement. I think I can also defend that position on its merits, and I would hope that actual knowledge of the subject will not be seen as disqualifying me.

The thesis of *Democracy in Chains* is as follows (it's a book with many aspects and subarguments, so what I describe here oversimplifies it):

1. The political Right felt that it was losing, both in politics and in the “culture wars,” after about 1960 and certainly after the utter collapse of the Republicans in the presidential race of 1964.
2. A number of leading figures of the Right recognized the importance of creating an intellectual program to animate and legitimate the (likely long and slow) resurrection of conservative values.
3. It happened that one scholar, James Buchanan, revealed a combination of intellectual creativity and rock-ribbed conservative values. The Right came to settle on Buchanan as their messiah. Funding poured in to support the Buchanan program. In particular, the Charles G. Koch Foundation directly supported Buchanan, and Buchanan's work would have been ignored without this support.
4. That intellectual program, the “public choice” movement, appears to highlight innocuous American values such as individual liberty and responsibility. But, in fact, it is a recipe for constructing a repressive system that replaces majority rule with an oligarchy of the wealthy.

When summarized in this way, MacLean's thesis really does read like a plot line that Ian Fleming rejected for a Bond novel: “No, that's nuts. Let's go back to the idea where a nuclear missile blows up the moon and changes the orbit of the earth, causing earthquakes that allow recovery of hidden oil reserves and diamonds. That's more plausible.” Nevertheless, the narrative thread connecting the documents and discussions that MacLean has selected from the much larger and more equivocal record does indeed have this structure, and that is what I am evaluating.

I think I should stipulate that the premises of MacLean's argument, numbers 1 and 2 in the previous list, are neither surprising nor novel. After the defeat of Barry Goldwater in 1964, conservatives panicked. Several groups met to strategize about how to win back the White House and rejuvenate the conservative movement, as anyone would expect in an adversarial political system.

Fair enough. But then the idea that Nixon's “southern strategy” comes from James Buchanan is absurd nonsense; there were plenty of strategists who had the idea. If Lyndon Johnson actually said, “I think we just delivered the South to the Republican Party for a long time to come,” after he signed the Civil Rights Act in 1964, it is unlikely that he gleaned that insight from Buchanan.

The contribution of *Democracy in Chains*, then, is to do two things, numbers 3 and 4 in the previous list: identify James Buchanan as the focal point of the revolution, and identify the content of public-choice research and teaching as anticonstitutional and antidemocratic. I discuss “Buchanan as focal point” briefly and then spend more time on public choice.

Buchanan as Focal Point

James Buchanan was a tireless, real “nose to the grindstone” kind of guy. As Geoffrey Brennan, Buchanan’s coauthor on three books, discussed with him in an interview, Buchanan made an effort to be in the office early, to stay late, and to work all the time in between (Buchanan 2001, part 1, at 34:00–36:00 minutes). He generally worked on Saturday and expected others to do the same. He also attended many academic meetings and was active in the organization of conferences and symposia, including meetings sponsored by a variety of academic groups (including the National Science Foundation).

Buchanan also attended meetings sponsored by groups whose goals focused on free and responsible individual citizens. As a methodological individualist, he was concerned that concepts of “we” or collective goals or aggregate concepts in macroeconomics were *scientifically* misleading. Political science and economics, in this view, should always start with individuals. MacLean quotes public-choice scholar Pierre Lemieux as saying, “The Public Choice revolution rings the death knell of the political ‘we’” (qtd. on p. i). Of course, Lemieux’s statement appeared in a magazine, and it was an argument about the correct approach to understanding phenomena in political economy. MacLean seems to think she has uncovered a secret, even though Lemieux’s quote comes from *Regulation*, a widely read, refereed publication, because she has never met anyone who argues that starting one’s analysis with collectives is a methodological mistake.

It happens that Duke University’s Department of Political Science is located on the main campus in Durham, North Carolina, and is listed in the campus phone book. Anyone at Duke who wants to find it will have no difficulty doing so. Further, the department has important resources for any scholar with a serious interest in researching James Buchanan. The department has two past presidents of the Public Choice Society (Geoffrey Brennan and Michael Munger) and one current president (Georg Vanberg). We are not fringe members of the Duke community: I was chair of the Political Science Department for ten years; Georg Vanberg is the current chair; and Brennan was the longtime director of the Philosophy, Politics, and Economics Program. In addition, and perhaps most importantly, Geoff Brennan was a longtime associate of Buchanan, producing three major books with Buchanan, more than ten journal articles on his work, and two major edited works that deal with Buchanan’s overall contributions to political science and philosophy.

In short, I would expect that a sophomore undergraduate who is writing a paper on Buchanan, even a one-off paper for a classroom assignment, would recognize the value in consulting Brennan, at a minimum, and probably also Vanberg (who was a family friend of Buchanan since childhood). But neither Brennan nor Vanberg were ever consulted, nor even contacted, by MacLean. Nor, if it matters, was I.

The reason *this* matters is that all three of us, Brennan, Munger, and Vanberg, can attest that Buchanan was extremely cautious about the propriety of taking money

from sources that attached any kinds of strings or conditions to a grant. Most particularly, in terms of the narrative in *Democracy in Chains*, James Buchanan never accepted funds directly from the Charles G. Koch Foundation if those funds had any sort of ideological condition or litmus test.

The reason that this point is important is that the new favorite parlor game of the academic political Left is *Six Degrees of Charles Koch* (much like the Kevin Bacon version but not nearly as fun). If it can be shown that the Koch Foundation contributed to an organization, which gave a donation to another group, which in turn supported yet another . . . well, you get the idea. If a researcher can establish that there is any connection between a scholar and “Koch money,” that scholar can simply be dismissed. Notice how problematic this trope is: one doesn’t have to react to the opponent’s ideas or arguments if one can establish “six degrees of Charles Koch.”

To see how silly this game is, consider: Duke University has received a wide variety of different kinds of support from the Charles Koch Foundation over the past decades, and the total amount received is considerable. This means that Professor Nancy MacLean works for a “Koch-funded institution” called Duke University. In the game, Koch funding, no matter what the amount, taints the whole institution.

Therefore, by the game’s rules, *Democracy in Chains* should be readily dismissed because it was produced by a scholar at a Koch-funded institution. Now, MacLean would (plausibly) object that you can’t dismiss all the work just because of one source of support. You would have to read the work to decide if it has merit. Anything else would be embarrassingly shoddy scholarship.

Yet it is quite clear that MacLean has not read Buchanan’s substantive work. To be fair, few people have; *The Collected Works of James Buchanan* (1999), published by Liberty Fund, runs to nineteen large volumes. But you can’t have it both ways: either “Koch funded” is cause for dismissal, in which case MacLean’s own book is useless right-wing propaganda, or you *do* have to read the work, and “Koch funded” tells you nothing about the content of the work or its merit.

As for Buchanan being a focal point of scholarship or political action, it’s hard to evaluate that claim. Again, I wish it were so, and I have tried very hard to make it so in my own writing (e.g., Dow and Munger 1990). One book coauthored by Buchanan, *The Calculus of Consent* (Buchanan and Tullock 1962), is commonly assigned on graduate reading lists in political science. Its impact has been much smaller in economics because Buchanan’s work has not made it outside the public-economics literature (except for the work on clubs).

Nevertheless, it is difficult to say whether Buchanan has become a focal point for organizing around the ideas of public choice. Let’s suppose, for the sake of argument, that he has. The real question, then, the crux of the matter, is the content of the ideas of public choice. MacLean has no training in public choice, had only spotty and incomplete access to the files of the Public Choice Society archive, which in 2013 was not yet organized (Buchanan died in January 2013), and chose not to avail herself of the fact that the nearby Duke Political Science Department is a world center for the study of

public choice. Rather than attempt a point-by-point correction of MacLean's clumsy, misleading, and superficial summary of public choice, I think it is useful here to offer my own summary in case the reader is actually interested in Buchanan's view of public choice. The reader interested only in historical fiction is, of course, welcome to stick with MacLean's alternative version.

Democracy, Public Choice, and the Problem of Limits

Buchanan did not believe in unlimited majority rule. But then, as he often rightly said, *nobody* believes in unlimited majority rule. Democracy is and must be a balancing of, on the one hand, the rights of minorities and, on the other, the ability of the majority to have its way within the domain established as "political" by the Constitution. That's another thing that is remarkable about *Democracy in Chains*: MacLean does not assign Buchanan a straw-man position. She (correctly) gives Buchanan's position as being the mainstream view, the one that everyone actually agrees with. And then she tries to defend the straw-man position, the one that no one actually believes. Remarkable.

The position she assigns Buchanan is this: he thought that democracy should be limited to protect minorities. Um . . . OK. Yes, that's right. We all believe that. As an illustration, I often ask my undergraduate students at Duke if they favor democracy. Being catechized in the notion that democracy simply means "good government," they all raise their hands.

Then I ask, "How many of you think that the 1973 Supreme Court decision *Roe v. Wade* should be overturned?" None of them or maybe sometimes one student will raise his or her hand. Then I ask, "What would happen if *Roe v. Wade* were overturned?" One student may venture, "Abortion would be illegal?" "NO!" I say loudly. "Democracy would break out!" What *Roe v. Wade* (410 U.S. 113 [1973]) does is limit the ability of voting majorities to impose their collective will on the lawful choices of individual women. If the decision were overturned, we would have unlimited majority rule, and many states would prohibit abortion. The role of the courts and the constitutional rights they interpret is precisely to limit "democracy" (if by democracy you mean majority rule).

Students (and MacLean, apparently) have never considered the problem of constitutions that was the center of Buchanan's thought. We need to balance two considerations: the will of majorities and the rights of minorities. The U.S. Constitution is explicitly antimajoritarian both in terms of its establishment of a court system that later developed judicial review to thwart majority will, as in the case of *Roe v. Wade*, and in its use of the republican form of selecting representatives in prescribed ways.

The Constitution explicitly and intentionally limits the domain of majority rule to the areas of life where collective coercion is justified. In my home state, North Carolina, a majority of citizens voted in 2012 to prevent same-sex couples from marrying. Many

“progressive” politicians and citizens felt strongly that the power of majorities must be limited and that the rights of minorities—in this case, members of the lesbian, gay, bisexual, transgender, queer community—to same-sex marriage must be protected. Notice what same-sex marriage was being protected against: majority rule.

Now, I have no idea what MacLean’s views were on the vote on North Carolina’s Amendment 1 in 2012, so I can speak only for myself. A large majority of citizens (62 percent of voters) favored making same-sex marriage unconstitutional. I argued in dozens of public debates, radio shows, and other forums that there is a fundamental right to a “civil union” form of contract and that if the state gives such rights of contract to any couples, then it is obliged to offer them to all.

You may disagree with my claim, of course; that’s not the point. The point is that my perspective—that the power of majorities must be sharply limited—eventually was validated by the U.S. Court of Appeals for the Fourth Circuit, in effect declaring that all such restrictions on same-sex marriage violate the U.S. Constitution. Were these limits on majorities part of a scheme for subverting American democracy? My progressive colleagues didn’t think so; the majority bashing was widely celebrated by the political Left—and, to be fair, by me because I firmly believe, as did James Buchanan for the same reasons, that majorities are often wrong, are often repressive, and must be constrained by the Constitution.

It is remarkable that MacLean sets up her argument as being in opposition to this claim. She is incensed by the argument that real democracy requires majorities to be shackled “in chains” (as her title suggests). Of course it does. That is one of the core premises of liberalism, that the rights of minorities must be protected. In fact, we all agree (there may be some exceptions, but I’m not aware of many serious ones) that majorities must be limited: even if the white majority wants to maintain an apartheid system of schools and public accommodations, they must be prevented from doing so.

It is plausible to protest, of course, that the real question is where these limitations on majorities should bind, but that is not the core of MacLean’s argument. It is the fact that Buchanan wanted to limit majorities at all that she finds offensive. Remarkable.

Buchanan’s argument was simply that democracy must balance the rights of individuals and the power of majorities. Democracy *must*, in this sense, be limited. Where the limit should be placed is a perfectly legitimate object of academic discussion. But the fact that there should be a limit is a core premise of liberalism. Why does MacLean pretend that limiting majority rule is controversial or that anyone who would advocate limits on majorities opposes the Constitution? The Constitution itself—as Buchanan often argued—is the most important protection we have *against* majorities.

The answer is that there is substantial disagreement about where majorities should be limited and where majorities should be allowed to impose coercive force on minorities without the consent of the minority. MacLean likely disagrees about the limits that Buchanan and many other public-choice thinkers would impose. And that’s fair enough as a basis for honest political disagreement. To understand why in fact the

public-choice approach would make these arguments, I'm afraid I must spend some time explaining the basic arguments made by public-choice theorists (for a longer review of public choice and Buchanan's contributions to it, see Munger forthcoming). The summary given by MacLean is quite sparse and selects only a few extreme aspects. It is important to get the whole story.

Public Choice

Public choice has three core premises: methodological individualism, behavioral symmetry, and politics as exchange. (For a much more in-depth introduction to public choice, with examples, please look at Randy Simmons's very accessible treatment in *Beyond Politics: The Roots of Government Failure* [2011]).

Methodological Individualism

The origin of the notion of "methodological individualism" may be Thomas Hobbes, who saw societies as chaotic particles bashing into each other. The institutions the society chooses can affect the way the particles behave, but the individual particles are still the ones behaving. The assumption of "methodological individualism" need not have any ethical content, and it is not an exclusive claim for the correct approach to modeling social activity. But, as Max Weber said, it is a useful starting point:

[It may] be convenient or even indispensable to treat social collectivities, such as states, associations, business corporations, as if they were individual persons. Thus they may be treated as the bearers of rights and duties or as the performers of legally significant actions. But for the subjective understanding of action in sociology these collectivities must be treated as solely the resultants and context of the particular acts of individual persons, since an individual alone is the subjective bearer of meaningful oriented action. . . .

It is a tremendous misunderstanding to think that an 'individualistic' method should involve what is in any conceivable sense an individualistic system of values. ([1922] 2013, 13)

Behavioral Symmetry

On the day after the announcement of the Nobel Prize in 1986, Alistair Cooke of the BBC said in his "Letter from America," "Public Choice rests on the homely but important observation that politicians are, after all, no different than the rest of us" (qtd.

in Brennan and Lomasky 1993, 2). That is, people are people; they aren't one thing in the grocery and something else in the voting booth.

Of course, differences in incentives and institutional context may cause differences in the behavior we observe, but then those differences should be attributed to the differences in incentives and context, not to differences in motivation. That's all that behavioral symmetry means. It is clear that Buchanan's view is the same as Swedish economist Knut Wicksell's on this count, although it is likely that Buchanan himself had reached this conclusion before finding it vindicated in the earlier work. As Wicksell put it,

[N]either the executive nor the legislative body, and even less the deciding majority in the latter, are in reality . . . what the ruling theory tells us they should be. They are not pure organs of the community with no thought other than to promote the common weal.

[M]embers of the representative body are, in the overwhelming majority of cases, precisely as interested in the general welfare as are their constituents, neither more nor less. ([1896] 1958, 86–87)

In other words, motivations are fundamentally the same. There is no reason to expect that *behavior* will be identical, but we can't simply assume that people acting as politicians are motivated by altruism, whereas the *same* people acting in the marketplace are motivated by greed. Second and more importantly, the modeling approach we analysts take should start with the idea that observed differences can be explained by economic and institutional variables acting through essentially the same preferences, rather than simply invoking different preferences at the outset.

Politics as Exchange

Many observers have thought and for that matter still think that public choice starts and ends with behavioral symmetry, and, of course, methodological individualism is common in economics generally. But many people miss the importance of the third element, "politics as exchange." Buchanan tried to explain that politics as exchange is actually central to public-choice analysis:

First, the claim that politicians and bureaucrats are simply like the rest of us There are . . . more saints in politics than in commerce. . . . If you start thinking about politics that way, then you have a very empty type of theory. So you have to try to explain political structure, political order, from some kind of perspective that will give you something other than an empty theory. . . . At some ultimate level, people must enter into politics for mutual

gain, there must be a shared benefit from being involved in organized governments.

So what must be added to the “politics without romance” piece is the idea that politics is in some ultimate sense an exchange process. You have to enter into a shared enterprise with other people. Without that, you have no means of justifying any political coercion of one person by another person.

[Otherwise,] [y]ou have no hope. . . . It’s a counsel of despair. . . .

You have to be very skeptical about the motivations, about the behavior of politicians and bureaucrats. But also recognize that in fact there can be gains to all of us from sharing in a political enterprise. And we . . . can construct schemes whereby everybody benefits. Everybody puts in and everybody benefits. What I would call a “Madisonian” element needs to be added to make Public Choice work. (Buchanan 2001, part 1, at 8:30 minutes)

This approach has important implications for a vexing “chicken-and-egg” problem: Which came first, markets or government? Buchanan rather deftly finesses this problem by defining politics as preceding either markets or government. The answer is that *exchange* came first:

[B]asic “political exchange,” the conceptual contract under which the constitutional order is itself established, must precede any meaningful economic interaction. Orderly trade in private goods and services can take place only within a defined legal structure that establishes individuals’ rights of ownership and control of resources, that enforces private contracts, and that places limits on the exercise of governmental powers. . . . Even within a well-defined and functioning legal order, “political exchange” necessarily involves *all* members of the relevant community rather than the two trading partners that characterize economic exchange. (Buchanan 1999, at 1:50, emphasis in the original)

This kind of cooperation, involving exchange, means that the agreement or contract involves nonmarket institutions and the mechanism of coercion is collective. This problem of collective action is of course of ancient vintage; a clear antecedent is David Hume’s description:

Two neighbours may agree to drain a meadow, which they possess in common; because ’tis easy for them to know each other’s mind; and each must perceive, that the immediate consequence of his failing in his part, is, the abandoning the whole project. But ’tis very difficult, and indeed impossible, that a thousand persons shou’d agree in any such action; it being difficult for them to concert so complicated a design, and still more difficult for them to execute it; while each seeks a pretext to free himself of the trouble

and expence, and wou'd lay the whole burden on others. ([1739–40] 1978, 538)

There is a mutual benefit, a Pareto improvement, from cooperation. For Buchanan, “politics” is a means for groups to overcome the transaction costs of negotiating and enforcing agreements in groups too large to foster Coasian bargaining arrangements (Coase 1960). Because in the absence of coercion many individuals would free-ride, a prior agreement on procedures and enforcement is necessary for the gains from cooperation to be available to the group. Hence, “politics as exchange” is actually a way of justifying coercion: there is consent by the governed, and therefore coercion is permitted. Again, this is actually the orthodox position, appearing nearly verbatim in the Declaration of Independence: “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” And, again, the unorthodox and extreme position would appear to be MacLean’s alleging that majorities have unlimited license to impose coercion on minorities.

Having summarized the general public-choice approach, I think it is important to describe Buchanan’s particular contributions to it and to examine the idiosyncrasies of his approach.

Buchanan’s Particular Approach

To have any clear conception of what Buchanan was trying to accomplish, it is important to examine four premises of his approach: philosophical anarchism, ethical neutrality, subjectivism, and (crucially though often confusingly) the “relatively absolute absolutes.”

Philosophical Anarchism

The very center of Buchanan’s political philosophy is the problem of authority. When can one person or group legitimately coerce someone? Or as Jean-Jacques Rousseau put it, “How can a man be free and yet subject to wills not his own?” ([1762] 1973, IV.2). Buchanan thought not only that there is a problem but also that the problem has a solution. His premise, as I discussed earlier, is that no source of authority outside of the individual is sufficient to justify coercion, whether it be revelation, natural law, right reason, or the state. However, the individual’s consent is always binding because otherwise autonomous individuals cannot then make binding agreements.

There are two distinct notions of philosophical anarchism: one holds that it is impossible to justify state coercion; the other argues that no fully satisfactory argument for justification has yet been given. In a way, almost everyone is a philosophical anarchist in the sense that he or she believes there are some orders given by states that individuals

are not morally obliged to obey and that—contra the “Eichmann defense” (“I was just following orders”)—they are not morally *permitted* to obey.

Buchanan would argue that informed consent, freely given, does oblige compliance. But requiring unanimity for every choice or decision is too high a standard. Consent is given instead *at the level of rules* or procedures. Consent to rules then obliges compliance to outcomes as long as those rules are followed.

How would this vision of liberty work, according to Buchanan?

To the individualist, the ideal or Utopian world is necessarily anarchistic in some basic philosophical sense. This world is peopled exclusively by persons who respect the minimal set of behavioral norms dictated by mutual tolerance and respect. Individuals remain free to “do their own things” within such limits, and cooperative ventures are exclusively voluntary. Persons retain the freedom to opt out of any sharing arrangements which they might join. No man holds coercive power over any other man, and there is no impersonal bureaucracy, military or civil, that imposes external constraint. (Buchanan 1975, 3)

The point is that by Buchanan’s standard—and taking his philosophical anarchism alone—it is not clear that any nation or state ever met his requirements for justifying political authority in terms of ideal theory. But he remedied this problem in practical terms through a combination of this “ethical neutrality” and “relatively absolute absolutes.” Buchanan was not an anarchist.

Ethical Neutrality

One of the most subtle and, for some readers, frustrating aspects of Buchanan’s approach is that he generally advocated accepting the existing distribution of wealth and power. Changes in the status quo require something like unanimity to modify that distribution. Of course, even this requirement might be elided if “the relatively absolute absolutes” were to dictate change. As Buchanan said in 2001, “You start with the idea that coercion is never justified in advance, on any grounds. Unless you can bring in some transcendental purpose, how can you justify coercion? Unless God’s rules, or ‘right reason,’ or [some a priori doctrine] justifies force, you can’t have coercion. If you say, ‘No, values start with us,’ start with the individuals, then how can one individual legitimately coerce another?” (Buchanan 2001, part 1, at 14:10 minutes).

This “neutrality” might be summarized in one of Buchanan’s stock phrases: “You have to start from where you are.” This is a commitment to the status quo, but the status quo commitment is contractarian, not conservative (as noted in Brennan 2015, 8).

Buchanan often insisted that any normatively guided action—any attempt at improvement—must “start from where we are.” At one level, this claim can be read as

a simple analytical requirement: it is difficult to imagine how one could start from anywhere else! But in Buchanan's hands the requirement has a more normative cast. It is a feature of his contractarian approach that normative desirability is grounded in agreement—with the natural thought that individuals will not agree to changes that make them worse off (all things considered).

The notion of starting at the status quo is a big advantage in terms of making Buchanan's approach more practical because the nature of the consent required to accomplish his object of qualified unanimity requires only that *changes* to the rules, not the rules themselves, must be negotiated.

Subjectivism

Interestingly, Buchanan's commitment to subjectivism might be interpreted as “self-ownership” with equal validity. The rather tepid claim that individuals are the best judges of their own welfare is actually quite radical if we carry it out as a public policy. But this claim is in keeping with Buchanan's view of the primacy of the individual: no one can be coerced.

The way this commitment to subjectivism cashes out in much of Buchanan's work is rather surprising. He had strong views about the good society and the ways state power should be limited. But he also thought that the will of the group was paramount. In the interview by Brennan, he goes as far as to say that a socialist society would be justified if there were a consensus in favor of that arrangement (Buchanan 2001, part 1, at 35:00 minutes). In Buchanan's contractarian view, it is the agreement that justifies coercion.

This makes MacLean's misrepresentation of the meaning of “self-interest” in public choice all the more strange. She says about public choice: “[I]n their assumption that individuals always acted to advance their personal economic self interest rather than collective goals or the common good, Buchanan's school went further, projecting unseemly motives onto strangers about whom they knew nothing” (p. 99). Buchanan didn't do that. He thought people made subjective judgments, and those judgments might well be altruistic or almost anything else. I'm afraid MacLean herself is doing what she wrongly decries in others.

The Relatively Absolute Absolutes

I think that many listeners would laugh when they heard Buchanan mention his notion of “relatively absolute absolutes,” thinking he must be kidding. He was not.

I couldn't live without the Relatively Absolute Absolutes. It gets me out of a lot of jams. It gets me off a lot of hooks, too! But it's a concept . . . that I picked up directly from Frank Knight and Henry Simons. . . . It prevents the

necessity of taking a position either as a relativist in all respects or as an absolutist. I am neither . . . it's an in-between position. . . .

There are some moral values that have been in existence a long time, that have been proved by the test of history. . . . [It] is best to live our ordinary lives by treating those as “relatively absolute absolutes.” . . .

[But] they are not beyond examination; nothing is sacrosanct. At one level of our existence you can evaluate those, you can say, “Are they really as stable, authoritative, or unchallengeable as they might seem?” We can challenge them in the academy; that’s the job of the academy. . . . But at the same time that is not just going out and saying “anything goes,” at all. So it gets you off that terrible problem of becoming [a relativist or an absolutist in moral theory]. I am neither. (Buchanan 2001, part 2, at 27:00 minutes)

In fact, in some ways the concept of the “relatively absolute absolutes” summarizes much of what is overarching and unifying about Buchanan’s whole worldview. He was very sympathetic to natural-rights theories and was persuaded that the libertarian philosophy was correct, while at the same insisting that groups are sovereign and that no outside force, be it revelation, law, or custom, could restrict what groups can commit to collectively. It is tempting to think that he was a natural-rights theorist or a pure contractarian. But he was neither. He was a Burkean without being a conservative because he would have disagreed with Burke that all traditions and all the “wisdom” handed down from the past is actually wise.

The Great Chilean Bugaboo

Space prevents me from considering many other aspects of Buchanan’s career, his thought, and his connections to various movements or groups discussed in *Democracy in Chains*. But MacLean makes one connection, in chapter 10, that does require a specific response: the allegation that James Buchanan materially participated in the overall structure and writing of the Chilean Constitution of 1980, which was imposed after a heavily managed plebiscite where voters approved the new set of rules.

The reader interested in the particulars of Buchanan’s experience in Chile in 1981 should consult Andrew Farrant and Vlad Tarko’s excellent paper “The Devil’s Fix: James M. Buchanan and the Pinochet Junta” (2015). The short version is that, contra MacLean, Buchanan had essentially no role in the writing of the Chilean Constitution and in fact was critical of the regime and its actions. And his criticism grew organically out of his previous work. As Farrant and Tarko note,

[W]hile any member of a political body can reasonably expect that collective decisions will be made which occasionally run counter to their interests, their membership of the polity may still remain preferable due to the overall

benefits associated with membership. Nevertheless, to assure that such overall benefits are adequately secured, it is necessary to impose constitutional limits on the exercise of power and provide constitutional guarantees of various individual rights. As Buchanan noted, “Persons who could not, at a time of contract, predict their own positions would never agree to grant unrestricted political authority to any group, whether it be a duly elected majority of a parliament, a judicial elite, or a military junta” [1977, 16]. (2015, 15)

Buchanan was a Rawlsian on this point; a military regime could never be justified, as Farrant and Tarko demonstrate in depth. They continue:

Buchanan had long insisted that any “non-constitutional revolution”—any coercively imposed “program of libertarianism from above”—merely invited “counterrevolution . . . [and] a continuing zero or negative-sum power sequence.” Similarly, Buchanan’s mid-late 1980s writings further distanced himself from MPS [Mont Pelerin Society] defenders of “enlightened” dictatorship. For instance, in the *Reason of Rules* [Brennan and Buchanan 1985] emphasized that they sought a genuinely “non-coercive and voluntary resolution of the generalized social dilemma that seems to describe modern politics,” and they make it abundantly clear that their analysis excludes from “consideration all non-democratic revolutions, constitutional or otherwise.” (2015, 18, citations omitted)

This summary is unfortunate for MacLean because it pulls the rug from under many of the speculations that make up chapter 10 in her book. In fact, *Six Degrees of Pinochet* is almost as big a parlor game for progressive academics as *Six Degrees of Charles Koch*. Sorry, folks. Nothing to see here; Buchanan had no practical impact on the Chilean Constitution.

As a longtime scholar of Chile, its constitution, and its political system, I genuinely wish Buchanan had had a role in writing it. To understand why, you would need to know something about political science. Let me explain.

Chile had a military coup in 1973. Chile had had previous coups, and military coups were fairly common in Latin America. The coup in 1973, ultimately controlled by Commander in Chief of the Army Augusto Pinochet, was repressive, often murderous. The regime had certain goals and chose economic and political measures in support of these goals. This situation raises an interesting ethical question: If an outsider helped the regime achieve those goals, was that outsider complicit in the regime’s repressive and murderous nature?

The Chilean people also had goals, which included transitioning away from a murderous military regime to a functioning democracy and having their country be restored to its place among the free nations of the world. In some ways, the goals of the

regime and the goals of Chile's people coincided. Perhaps because of the long tradition of military deference to civilian authority in Chile or perhaps to ease economic and other sanctions, the junta wanted to restore democracy.

The problem was that "too much" democracy too fast would almost certainly mean another military coup. There is a fundamental theorem of political science, often associated with the work of Barry Weingast of Stanford University, that we might call the "proportionality theorem" (see, e.g., Weingast 2008–9; North, Wallis, and Weingast 2009). If paper institutions, such as constitutions, attempt to create a de jure distribution of power that differs from the de facto distribution of power on the ground, there will be violence. And the resulting conflict is likely to be won by those who possess de facto power.

In the case of Chile, this theorem means that the military still controlled actual power, regardless of what the Constitution or the laws might say. This control is simply a fact of life in nations attempting to make the transition to democracy; we recently saw it play out in Egypt, when Mohamed Morsi tried to assert powers that he thought the Constitution afforded him. The military thought that it was time for a new government, and it had some folks—military officials themselves—in mind. As a result, the Arab Spring and all the hopes of Tahrir Square ended on the points of the army's bayonets.

We might wish it were otherwise, but it's a fact of democratic transitions: the existing distribution of power must be recognized and committed to by the constitution. Actually, it's an application of Buchanan's "we start from where we are" maxim because you can't start anywhere else. The Chilean problem was clear: if full power had been given by the new constitution to the new democratically elected government (which would be selected by a "Si o No" plebiscite in 1988, an election in 1989, and the installation of a new government in 1989), there would likely have been an immediate move toward a "truth tribunal," with arrests and trials of military leaders and the middle-level officers who had carried out the murder, torture, and repression from 1973 to 1976.

It's easy to argue, from the outside or from the perspective of decades later in time, that this is just what should have happened. But it wouldn't have happened. If Chile had had a "good" constitution, there would have been a coup as military leaders protected themselves. Chile would not be a democracy. Barry Weingast has made this argument with various coauthors, and other political scientists have recognized in a variety of published writings this same problem of "credible commitment." I myself first worked in Chile as a consultant in the presidential election of 1989 and saw firsthand both that the election was free and fair (it was won by moderate leftist Patricio Aylwin) and that the Constitution was very much resented as being unfair. But if the Constitution had been different, there would have been no election, or the election results would have been repudiated, and a military junta immediately restored.

The people of Chile needed help escaping from the military regime. A constitution must foster a move to democracy and free and fair elections, but it must also avoid a military coup. It would serve no one to have had a constitution that allowed

an immediate transfer of power, if a Truth Tribunal had been convened, followed by arrests of top military officers, only to be followed by the reestablishment of military rule. That is frustrating because they clearly deserved it. But the only way to get from military regime to functioning democracy was the way Chile did it.

In terms of *Democracy in Chains*, then, the following points must be made in response. First, it's true that Chile had a grossly unfair and "undemocratic" constitution, imposed essentially at gunpoint in 1980. Second, Buchanan had no practical role in the writing or the form of that constitution. Third and most important, Chile's Constitution was actually a *good* constitution because it allowed the transition to democracy (see Weingast 2014). It is of course unjust that the killers and torturers of the regime escaped punishment. But politics is the art of the *possible*. Chile needed a way to move to free and fair elections and stable democratic government. And it has done that.

Final Thoughts: A Digression on Method

At the beginning of this essay, I claimed that the "method" MacLean uses in *Democracy in Chains* is historical fiction, an informed account of the general outline of events, but with the conversations and nuances interpolated and not strictly "historical." I want to illustrate how she deploys this method so that the reader can better judge (1) whether my claim is tenable and (2) whether her account informs us of actual events.

MacLean asserts her core claim later in the book: the public-choice movement, led by James Buchanan but now operating autonomously, wants to subvert U.S. democracy and establish a military-led plutocracy (pp. 222–24). As she puts it, "The ultimate target of the well-heeled right's stealth plan, though, as Buchanan for so long urged, is the nation's most important rule book: The U.S. Constitution" (p. 222).

To nail down this claim, developed throughout the book by interpolating "facts" found nowhere in the archived documents she considers, MacLean examines a work by Tyler Cowen of George Mason University's Economics Department. She notes that Cowen points to the success of neoliberal policies—deregulation, privatization, flat taxes—in Hong Kong, Singapore, Peru, and New Zealand. But then she delivers the real core message of the book:

[Cowen] identified another commonality in the success stories: "In no case were reforms brought on by popular demand for market-oriented ideas." The pro-liberty cause faced the same problem it always had: it wanted a radical transformation that "find[s] little or no support" among the people. Cowen delivered the action implication of its minority following *without mincing words*: "If American political institutions render market-oriented reforms too difficult to achieve, then perhaps those institutions should be changed."

The economist was creating, *it seems fair to say*, a handbook for how to conduct a fifth column assault on democracy. “The weakening of the checks and balances” in the American system, Cowen suggested, “would increase the chance of a very good outcome.” Alas, given the pervasive reverence for the U.S. Constitution, a direct bid to manipulate the system could prove “disastrous.” Cowen’s best advice, informed by the Chilean experience, was sudden percussive policy bombing, akin in nature, *one could say*, to the military doctrine of shock and awe, which uses colossal displays of force and calculated interlinked maneuvers to shock the enemy into submission. (pp. 223–24, emphasis added)

There are three points worth mentioning about this passage, which is one of the most remarkable examples of why this book is remarkable.

1. MacLean interprets Cowen’s message and says he is not “mincing words.” But MacLean *does* mince words: she minces Cowen’s words. In fact, she slices, dices, and purees them. Here is what Cowen actually said in the publication MacLean references, with MacLean’s selectively quoted words italicized:

Given the instability of the Westminster parliamentary system, as discussed above, it is unlikely the U.S. would be better off moving in that direction. While *the weakening of checks and balances would increase the chance of a very good outcome*, it also would increase the chance of a very bad outcome. Furthermore, the perceived legitimacy of the U.S. Constitution suggests that such a change would involve *disastrous* transition costs. The American social consensus in favor of the Constitution could not easily be reconstructed from some alternative set of political institutions. (Cowen 2015, 20)

There is no way to read the paragraph *that Cowen actually wrote* and use his words to make MacLean’s point. But since her book is a work of historical fiction, she confects that point; *she* minces Cowen’s words, cutting his phrase from a context that actually reverses the meaning she ascribes to him.

2. The misuse of the cut-and-paste feature of MacLean’s word processor is not accidental, and it is not intended ironically. MacLean knew perfectly well that the main points of public choice are that checks and balances are actually crucial and that “social consensus in favor of the Constitution” is *good*, not bad, in public-choice scholars’ opinion. Thus, it is not “fair to say” that Cowen was writing a handbook for fifth-column subversion. But the truth is rather boring, and that just wasn’t the story she wanted to tell here. As you read the book, you may notice that when something like “fair to say” is used for a paraphrase, that paraphrase is destructive of the meaning the person being quoted actually intended.

3. Finally, the connection with Chile is at once misleading and wrong. As I noted earlier, Buchanan was actually quite critical of the Pinochet regime and reluctant to participate in any way. But more important is the question that Cowen was actually

working on in the quoted passage and in the paper MacLean addresses here: How can a nation develop good economic and political institutions? In particular, in terms of policy advice, should a nation try to develop rule of law and property rights first and political democracy second? Or the other way around, political democracy first? It is at least a legitimate argument to advance that the transition to democracy made by South Korea, Taiwan, and other nations that were once military dictatorships or that suffered from one-party rule rested on their development of market institutions. Once a nation reaches a certain level of prosperity, the counterweight of the new middle class may give democracy more stability than if democracy is imposed first, before property rights and rule of law are established. Notice I am not claiming this argument is obviously correct; rather, I'm identifying Cowen's mention of Chile as an example of a nation that "started" with military dictatorship, imposed a system of property rights and a constitution that restricted political liberty, and then made the successful transition to full democracy. Rule of law allowed Chile to become a stable constitutional republic, like the United States. Trying to argue that Cowen wants the United States to be like Chile is just a misleading mincing of words.

As I hope is clear, I think that *Democracy in Chains* is well written and that the research it contains is both interesting and in many cases illuminating. But as an actual history, as a reliable account of the centrality of James Buchanan and his work in a gigantic conspiracy designed to end democracy in America, it turns far away from its mark. It is the story of an alternative past that never actually happened.

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Acknowledgments: An earlier version of this essay was published at the Independent Institute website on July 29, 2017, at <http://www.independent.org/issues/article.asp?id=9115>.