

# Modeling the individual for constitutional choice

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**Abstract** This paper is about the use of the *homo economicus* behavioral model in the constitutional political economy research program. The paper argues that all existing arguments in defense of the behavioral model fail. These arguments are: the symmetry argument, the enterprise argument, the increasing costs argument, and the crowding out argument. As a result, those working in the constitutional political economy tradition are not justified in employing *homo economicus*, at least not until a new argument successfully defending the behavioral model is provided.

**Keywords** Constitutional political economy · Constitutional choice · Homo economicus · Behavioral modeling · Rational choice · James M. Buchanan · Geoffrey Brennan

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## 1 Introduction

This paper is about the use of the *homo economicus* behavioral model in the constitutional political economy (CPE) research program. The paper argues that all existing arguments in defense of the behavioral model fail. As such, those working in the CPE tradition are not justified in employing *homo economicus*, at least not until a new argument is provided successfully defending the model. Before examining why these arguments fail we need to know more about the *homo economicus* behavioral model and more about the CPE research agenda.

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Following Gebhard Kirchgässner (2014: 4–7) we can distinguish between the *narrow* version of *homo economicus* and the *wide* version of *homo economicus*. The wide version of *homo economicus* adopts the basic rational choice behavioral model and keeps utility functions open or relatively open, admitting several different arguments into the functions, of which other-regarding elements may be included. The narrow version also adopts the basic rational choice behavioral model but utility functions are defined such that *homo economicus* is simply a wealth-maximizer. On the narrow version, *homo economicus* prefers more wealth to less. This narrow version is how *homo economicus* is usually defined when modeling market behavior.

Again following Kirchgässner (2014: 3–4) we can distinguish between *constitutional political economy* and *public choice theory*. Public choice theory applies the analytic tools and methods of economics to the study of political institutions. It seeks to form predictive hypotheses about collective action that can then be empirically verified. In comparison to public choice theory, CPE also applies the analytic tools and methods of economics to the study of political institutions, but does so to compare different institutional arrangements and the resulting states of affairs these institutional arrangements might produce. It is not primarily an empirical project. Buchanan saw CPE as informing his broader contractarian normative theory,<sup>1</sup> although CPE and Buchanan's contractarianism can come apart.<sup>2</sup>

When engaged in public choice the behavioral model one adopts will be the one that best explains the relevant data. Because of this it is doubtful that public choice theory uses solely the narrow version of *homo economicus*, although there may be some areas where the narrow version is descriptively accurate. When engaged in CPE, though, and especially when CPE is seen as part of a larger normative project, it is not obvious that the behavioral model one should adopt is the model that best explains the empirical data. In a series of books and articles written in the 1980's Geoffrey Brennan and James M. Buchanan argued that, though the narrow version of *homo economicus* might not be empirically descriptive and thus is inappropriate for many public choice explanations, it is still the appropriate behavioral model for constitutional comparison and constitutional choice.<sup>3</sup> But why is narrow *homo economicus* the appropriate behavioral model for CPE? In defense of this claim Brennan and Buchanan offer four different arguments. This paper examines these arguments. It concludes that all such arguments fail.

The structure of this paper is simple. Each section corresponds to and offers an appraisal of a different argument Brennan and Buchanan offer in defense of narrow *homo economicus* for the purposes of CPE. These arguments are: the symmetry argument, the enterprise argument, the increasing costs argument, and the crowding

<sup>1</sup> For a detailed overview of Buchanan's contractarian normative theory see Congleton (2014) and Vanberg (2014).

<sup>2</sup> On this point see Brennan and Hamlin (1995: 289).

<sup>3</sup> For explicit endorsement of the narrow wealth-maximizing version of *homo economicus* for employment in CPE see Brennan and Buchanan (1980/2000: 19); Brennan and Buchanan (1981: 156, 159); Brennan and Buchanan (1983: 89–90); Brennan and Buchanan (1985/2000: 53); Buchanan (1990/1999: 392). It is not, of course, a *necessary* feature of CPE that narrow *homo economicus* be employed. For instance, Brennan and Hamlin (1995: 298–301) argue that CPE (not public choice theory) should apply a much wider utility function than simple wealth-maximization. That said, the founder of CPE and several followers believe that the narrow version of *homo economicus* ought to be applied to the endeavor of constitutional comparison and constitutional choice. This paper focuses on this understanding of CPE.

out argument. All such arguments admit that narrow *homo economicus* may not be the best descriptive model but, nonetheless, is still the behavioral model uniquely suited for CPE. I show that all of these arguments fail. Section six concludes.<sup>4</sup>

## 2 The symmetry argument

One of the arguments Brennan and Buchanan give in defense of *homo economicus* is the *symmetry argument*. The symmetry argument says that we should presumptively model the individual consistently across all domains of social life. Consider this passage:

On the basis of elementary methodological principles it would seem that the *same* model of behavior should be applied across different institutions or different sets of rules. The initial burden of proof must surely rest with anyone who proposes to introduce differing behavioral assumptions in different institutional settings... If an individual in a market setting is to be presumed to exercise any power he possesses (within the limits of market rules) so as to maximize his net wealth, then an individual in a corresponding political setting must also be presumed to exercise any power he possesses (within the limits of political rules) in precisely the same way.<sup>5</sup>

Though considerations of behavioral symmetry are mentioned in Buchanan's earlier work,<sup>6</sup> the symmetry argument is not given as an explicit argument in favor of *homo economicus* until his later co-authored works with Brennan. Before examining more closely the symmetry argument it should be stated that the symmetry argument, on its own, does not require we employ the *homo economicus* behavioral model. The symmetry argument only requires we employ the same behavioral model across all domains of social life. But since economists want to hold on to *homo economicus* in their models of market behavior the symmetry argument, for all practical purposes, requires we assume *homo economicus* in other areas of social interaction as well. I shall thus talk as if the symmetry argument requires employing *homo economicus*, although, strictly speaking, this is false.

I would like to make one point of clarification concerning the symmetry argument before beginning an analysis of the argument's cogency. One might think that, in a sense, the symmetry argument trivially follows from the fact that persons have one mind.<sup>7</sup> Since individuals have one mind regardless of what domains of social life they interact in there must be *some* utility function accurately characterizing this mind that can ubiquitously be employed across all domains of social life. This sounds right. However, the kinds of functions economists can

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<sup>4</sup> In what follows I no longer distinguish between narrow and wide *homo economicus*. The arguments presented are in defense of employing narrow *homo economicus* and I analyze them in terms of whether they can in fact justify the employment of narrow *homo economicus*. From this point forward my use of the term *homo economicus* signifies the narrow version of *homo economicus*.

<sup>5</sup> Brennan and Buchanan (1985/2000: 56). See also Brennan and Buchanan (1981: 159).

<sup>6</sup> See Buchanan and Tullock (1962/2004: 19).

<sup>7</sup> I thank the editor of *Constitutional Political Economy* for this insightful remark.

define—though quite complex and ever-increasing in their complexity—can never fully capture the entire mind of an individual. As such, utility functions should be thought of as partial descriptions of minds. When functions are understood as partial descriptions of minds the possibility of employing different functions for the same person in different domains of social life becomes coherent (*this* aspect of the individual comes out in this domain of social life which is why we use function  $U_1$ , *that* aspect of the individual comes out in this other domain of social life which is why we use function  $U_2$ ), as does argumentation concerning when symmetric and asymmetric behavioral models should be employed.

The symmetry argument is perhaps the most intuitively plausible of all the arguments Brennan and Buchanan give in defense of *homo economicus*. However, it is by no means obvious that the *homo economicus* behavioral model is the correct model of the mind to apply. Why does the success of *homo economicus* in explaining market interaction require we employ *homo economicus* in all other domains of social interaction? Surely there are some facets of social life where *homo economicus* is inappropriate. It seems doubtful that everything I do for my church or my family should be modeled in terms of wealth-maximization. Altruistic motives are not only present but dominant when I interact with these groups. The relationship between my family and I is not best understood in terms of *homo economicus* but some other behavioral model.<sup>8</sup> Neither is the relationship between myself and my church. But the symmetry argument disallows introducing a different behavioral assumption to model these areas of social interaction. Though CPE does not strive for complete empirical accuracy as public choice theory does, CPE certainly requires *some* empirical accuracy for meaningful institutional comparison and institutional choice. The worry here is that the application of *homo economicus* to some areas of social interaction will produce *wildly* false models, so false that the models are no longer useful for CPE's non-empirical, normative goals. Call this *Hume's objection* to the symmetry argument, based on Hume's account of those motives that obtain when we interact with our families and other similar social groups.<sup>9</sup>

Hume's objection to the symmetry argument misses a key feature of the symmetry argument. The symmetry argument does not say we must always employ the same behavioral model across all domains of social life. The symmetry argument only says that we must *presumptively* employ the same behavioral model across all domains of social life. So before we discount the symmetry argument we

<sup>8</sup> One might think that this objection is falsified by Becker (1981/1993)'s impressive work on the economics of the family. However, though Becker certainly applies the rational choice behavioral model to the study of the family, he does not apply narrow *homo economicus* in particular. He defines utility functions such that members of the family maximize things besides wealth.

<sup>9</sup> Hume (2000: 313) says: "So far from thinking, that men have no affection for any thing beyond themselves, I am of opinion, that tho' it be rare to meet with one, who loves any single person better than himself; yet 'tis as rare to meet with one, in who all the kind affections, taken together, do not over-balance all the selfish. Consult common experience: *Do you not see, that tho' the whole expence of the family be generally under the direction of the master of it, yet there are few that not bestow the largest part of their fortunes on the pleasures of their wives, and the education of their children, reserving the smallest portion for their own proper use and entertainment?*" (emphasis mine).

need to understand when the presumption in favor of symmetric behavioral modeling can be overcome. If the presumption can be overcome in the cases listed as counterexamples above then they are no longer counterexamples. The symmetry argument is no longer committed to employing *homo economicus* in the specific spheres of social life it cannot adequately explain, such as interaction between family members or interaction between members of a church.

So whether the symmetry argument falls prey to Hume's objection depends on whether our counterexamples can overcome the presumption. This raises the question: how do we overcome the presumption? According to Brennan and Buchanan we overcome the presumption in favor of behavioral symmetry if we give some kind of *institutional* explanation for why preferences and thus utility functions change. This institutional explanation of changes in utility functions justifies employing a new behavioral model. Brennan and Buchanan say:

But what is most important, because it may be less obvious, is that the methodological requirement of uniformity in the behavioral postulates *remains* even if there is good empirical evidence and analytical presumption that behavior may be different between different institutions. This is so because those differences in behavior have to be *shown* to be attributable to differences in institutions; and if a different model of human behavior is adopted for each institution at the outset, the relevant results will simply be assumed, not analytically *derived*.<sup>10</sup>

The idea here is that the symmetry presumption is overcome and a different behavioral model is justified if we can explain why preferences and thus utility functions shift as a result of institutional rules. If we cannot offer such an explanation then we need to stick with the same behavioral model across all domains of social interaction. Without an institutional explanation we are stuck with *homo economicus*, making Hume's objection seem quite powerful.

This account of how we overcome the symmetry presumption is puzzling. It is puzzling because it is not clear *how* institutional rules change preferences. Institutional rules influence behavior by changing the price of different actions.  $\varphi$ -ing might cost  $p_1$  under institutional regime  $i_1$  but cost  $p_2$  under institutional regime  $i_2$  where  $p_1 > p_2$ . Because of this, whether I  $\varphi$  or not will depend on (i) the institutional regime I'm acting in (either  $i_1$  or  $i_2$ ) which sets the price of  $\varphi$ -ing, coupled with (ii) my preferences over other possible actions and (iii) my budget constraint. But though institutional rules can shape what I actually *do* it is not clear how a change in price can affect what I *prefer*. That is, it is not clear how institutional rules change the shape of my utility function, though they might influence which members of my utility function are eventually acted on.

Since we cannot make sense of how institutional rules change our preferences it is hard to see how our presumption of symmetric behavior modeling is ever overcome. We can thus never employ a behavioral model besides *homo economicus*. We must model our interactions in our churches, families, and other similar settings while using *homo economicus* because we can never explain a shift

<sup>10</sup> Brennan and Buchanan (1981: 159–160). See also Brennan and Buchanan (1985/2000: 57).

from *homo economicus* to another behavioral model through institutional rules alone. But, as Hume's objection asserts, it is doubtful that *homo economicus* can actually explain these domains of social interaction that are usually characterized by altruistic rather than wealth-maximizing motives. So the symmetry argument forces us to apply a behavioral model to areas of social interaction where it is inappropriate.

The defender of the symmetry argument might reply like this. Though it is technically true that we will never be able to overcome the presumption of symmetry, we might be able to model what *appears* to be a shift in preferences in various domains of social interaction while still employing *homo economicus* through mere appeal to price changes. So we might be able to model our interactions with our churches and families *as if* we are altruistic actors, though really we are wealth-maximizers responding to different institutions. This response simply rejects Hume's objection that *homo economicus* is inappropriate for modeling certain domains of social interaction. *Homo economicus* can be applied to the church and the family and explain our *as if* altruistic behavior through price changes alone. In running this line of argument one might point to Stigler and Becker's seminal paper arguing that what often appears to be changing utility functions can actually be understood as constant utility functions responding to price changes.<sup>11</sup> Though there is certainly a connection to Stigler and Becker's paper and the response being entertained there is a significant problem with employing a Stigler-Becker type argument to counter Hume's objection.

Stigler and Becker do not try to explain what appear to be shifts in preferences given a *homo economicus* behavioral model but rather a basic rational choice model with functions stipulated to maximize other things besides wealth. For instance they show that, given an existing preference for a good (such as classical music), we can explain an increase in the consumption of that good without changing the configuration of the explanandum's utility function. Though one might think the explanandum's preference for classical music has increased relative to her other preferences, Stigler and Becker show how an increase in consumption for classical music can be accounted for by a constant utility function and changing prices.

The success of the above explanation depends on its starting place. Stigler and Becker do not claim they can explain an increase in consumption of classical music from *any* existing set of preferences. Stigler and Becker explain the behavioral shift through the price mechanism given the assumption that the explanandum initially derives utility from classical music in the first place. The Stigler-Becker thesis leaves unaddressed the question of whether we can explain any and all behavior from the *same* starting place, namely from *homo economicus* defined narrowly as a wealth-maximizer. Can we explain altruistic behavior in certain spheres of social interaction by appeal to wealth-maximization and price changes? Probably not. Now a Stigler-Becker style argument could explain why someone with an existing preference for altruism acts more or less altruistically in some social settings over others given changes in the cost of altruism that obtain in different institutional settings. But holding on to *homo economicus* does not allow us to do this. *Homo*

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<sup>11</sup> Stigler and Becker (1977).

*economicus* does not have an existing preference for altruism that will be more or less realized given the costs of altruistic behavior in different social settings. *Homo economicus* maximizes wealth. Can we get from this preference and only this preference to an explanation of any and all behavior given changes in prices alone? It is doubtful.

Shifting gears, one might respond to Hume's objection by arguing that the symmetry argument only requires symmetric behavioral modeling between market and political institutions. Hume's objection complains that *homo economicus* is an inappropriate behavioral model for many facets of our social life, like how we interact with our families and churches, yet the symmetry argument requires we employ *homo economicus* in analyzing these areas of social life. This response says that Hume's objection is a straw man. The symmetry argument does not require we do this. It only requires symmetry between analyses of economic and political institutions.

In examining this response to Hume's objection it is worth asking why we should only apply the symmetry requirement to the analysis of economic and political institutions. Doing so initially seems arbitrary. Indeed, we can apply something like a meta-symmetry argument to the symmetry argument itself: the requirement of symmetry must presumptively be applied across all domains of social interaction symmetrically unless a compelling reason can be found to asymmetrically apply the symmetry requirement. We need to offer a reason for why we should only model economics and politics symmetrically rather than all facets of social life. We need to overcome a presumption of symmetry for the symmetry requirement itself.

One reason we might asymmetrically apply the symmetry requirement is this. Both economics and politics are an *exchange process*, and thus should be examined similarly using the same behavioral model, namely *homo economicus*. In economics we exchange goods and services. In politics we exchange votes and favors.

There are two reasons why this justification of asymmetric application of the symmetry requirement fails. The first reason is this. It is not clear that the problematic areas of social life that *homo economicus* has trouble modeling—interaction with our families and churches—do not involve exchange. I exchange many things with my family. I also engage in exchange with my church. But in doing so I am not trying to maximize wealth. My exchanges consist of some thought for my own benefit but are mostly characterized by other-regarding considerations. I play the exchange game in these settings, but I do not try to get the highest score possible (if score is understood as wealth). One cannot argue for asymmetric application of the symmetry requirement by saying that we should only require symmetry in social interaction characterized by exchange. There are areas of social interaction that are characterized by exchange that still should not be modeled by employing *homo economicus* because the goal of such exchange is not total wealth-maximization.

Here is the second reason why this justification of asymmetric application of the symmetry requirement fails. This account of why we should asymmetrically apply the symmetry requirement can, against some interlocutors, beg the question. Some people might object to the employment of *homo economicus* in examining political institutions precisely on the grounds that politics simply is not an arena of exchange.

Saying that we should apply symmetry to political and economic institutions because they are both areas of exchange simply assumes what the objector denies. Doing so begs the question against the objector.

Hume's objection to the symmetry argument stands. In requiring symmetric behavioral modeling across *all* domains of social life the symmetry argument forces us to employ *homo economicus* to social settings where it is inappropriate. We cannot overcome the mere presumption in favor of symmetric behavioral modeling because the presumption, strictly speaking, can never be overcome. Nor can we explain altruistic behavior in the problematic social settings via price changes alone. The symmetry argument thus commits us to an implausible conclusion. It forces us to employ *homo economicus* to domains of social interaction that are unfit for our wealth-driven behavioral model. Doing so could produce wildly false models at odds with CPE's normative goals. Institutions might be justified or selected that otherwise should not be justified or selected. The symmetry argument fails.

### 3 The enterprise argument

Another argument Brennan and Buchanan offer in defense of employing *homo economicus* appeals to the enterprise of comparative institutional analysis. The very enterprise of comparative institutional analysis, as a conceptual matter, requires we model the institutions we are comparing under the assumption that such institutions are populated by *homo economicus*. If we do not employ *homo economicus* when performing comparative institutional analysis then we are failing to perform comparative institutional analysis. One feature that must be present to perform the analysis is absent. Call this the *enterprise argument*.

For the enterprise argument to succeed Brennan and Buchanan must flesh out what the enterprise of comparative institutional analysis is. Brennan and Buchanan must give some account of what comparative institutional analysis tries to accomplish. If they do not do this then the enterprise argument cannot succeed. This is because it is in no way obvious that the very *act* of performing comparative institutional analysis *requires* we model persons as *homo economicus*. I can compare schemes of private ownership of the means of production to schemes of public ownership of the means of production under the assumption that persons populating such schemes try to maximize some pre-specified social welfare function rather than personal wealth. *Prima facie* this seems to be an instance of comparative institutional analysis. Yet the enterprise argument says that this is not actually an instance of comparative institutional analysis because of the behavioral model used. Brennan and Buchanan must tell us why this is not an instance of comparative institutional analysis.

In fleshing out the details of the enterprise argument Brennan and Buchanan give, in different works, different accounts of what the enterprise of comparative institutional analysis is. One account of the enterprise of comparative institutional analysis goes like this:

Our central argument here is simple. The question we are interested in posing about any particular social order is whether the rules by which individual actions are coordinated are such as to transform actions undertaken by participants in their own *private* interests into outcomes that are in the interests of others. We know that this curious alchemy is in fact worked by the *market* – that the invisible hand operates, under certain more or less well-defined conditions, to convert private interest into public interest. *The prime task of comparative institutional analysis is to ensure whether other institutions do the same, and, if so, whether those institutions do so under more or less restrictive assumptions.*<sup>12</sup>

Brennan and Buchanan here say that the task of comparative institutional analysis is to examine to what degree institutional arrangements are capable of transforming private interests into public good via an invisible hand mechanism. Because we want to see if political institutions are capable of transforming private interests into public good as is the case with the market we need to employ the *homo economicus* behavioral model.

There are two problems with this version of the enterprise argument. The first problem is this. Suppose that Brennan and Buchanan are right in saying that the task of comparative institutional analysis is to examine to what degree institutional arrangements are capable of transforming private interests into public good. Even if true this account of the enterprise of comparative institutional analysis does not entail we employ the *homo economicus* behavioral model. Rather, this account of the enterprise of comparative institutional analysis only requires we employ the rational choice behavioral model. This is because private interest is most plausibly interpreted as any form of maximizing behavior rather than narrow wealth-maximization. If private interest only took the form of wealth-maximization then we would have to say that people who strive for things besides wealth—fame, power, glory, etc.—are not acting in their own private interests. This is implausible. Or, if one wants to say that the rational choice model is too broad to encompass private interest then one might instead say that the rational choice model supplemented with broadly non-tuistic utility functions intuitively captures what is meant by private interests. Still, there are many functions that are broadly non-tuistic that are inconsistent with *homo economicus*. For this version of the enterprise argument to justify the employment of *homo economicus* Brennan and Buchanan would have to say that the point of comparative institutional analysis is to determine to what degree different institutions transform private, *wealth-driven* interests into public good. Only then would the conclusion follow. But as the account of the enterprise of comparative institutional analysis grows more and more narrow, such an account becomes less and less plausible. This leads into the second problem.

The second problem with this version of the enterprise argument is this. It is not obvious that the only way of understanding the enterprise of comparative institutional analysis is as a comparison between how well institutions transform private wealth-driven interests into public good. Some people engage in

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<sup>12</sup> Brennan and Buchanan (1981: 160) emphasis mine.

comparative institutional analysis with the goal of picking out an institutional arrangement that best satisfies some pre-specified evaluative criterion under a very specific set of circumstances. As an example, much of the socialist calculation debate was not a debate about which institutions best transform private interests into public good. Indeed, appealing to such factors as private interests was deemed mere “sociology” and considered an illegitimate form of argument.<sup>13</sup> Instead, the socialist calculation debate was a comparison between institutions in terms of their ability to satisfy certain efficiency criteria. The socialist calculation debate seems to be a paradigmatic example of comparative institutional analysis. But according to Brennan and Buchanan’s definition of comparative institutional analysis, the socialist calculation debate was not an instance of comparative institutional analysis because it did not analyze how different institutions transform private interests into public good. This is implausible.

In a later piece Brennan and Buchanan once again put forth the enterprise argument, but in doing so give a different account of what comparative institutional analysis is. They say this:

Once we acknowledge that private and differentially identifiable interest is relevant at all to human behavior, a comparison of alternative institutions must attend primarily to the question of how those institutions operate when individuals act in pursuit of their separately defined interests. If there were no conflict among interacting agents, that is, if interests were not differentially identifiable, then, of course, there would be no concern about how alternative sets of rules might modify and transform such conflicts. But to deny that there are conflicting interests among persons is to engage in an absurd flight of fancy. Individuals’ objectives differ. Conflict exists, and the investigation of alternative institutions is ultimately motivated by some criteria of conflict resolution.<sup>14</sup>

In this version of the enterprise argument Brennan and Buchanan say that the point of comparative institutional analysis is to examine how different institutional arrangements adjudicate competing interests between parties. To determine how well different institutional arrangements accomplish this we must model individuals using *homo economicus*.

The problems with this version of the enterprise argument are similar to the problems faced by the first version of the enterprise argument. As before, it is unclear why we should adopt this narrow definition of comparative institutional analysis. The socialist calculation debate was not concerned with how well different institutional arrangements adjudicate competing interests but rather the efficiency properties of various institutional arrangements. But though it did not focus on how institutions adjudicate competing interests it still seems like the socialist calculation debate was an example of comparative institutional analysis. If we accept Brennan and Buchanan’s argument, though, we are committed to this not being true.

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<sup>13</sup> On this point see Boettke and Leeson (2004: 107).

<sup>14</sup> Brennan and Buchanan (1985/2000: 60).

But suppose that Brennan and Buchanan are right and that the point of comparative institutional analysis is to examine to what degree different institutional arrangements adjudicate competing interests. If true, does this require we employ *homo economicus*? This account of comparative institutional analysis, if correct, does prevent us from using some models of individual behavior. We could not, say, model all individuals as trying to maximize a shared social welfare function. In such a society there would not be conflicting interests. But though some behavioral models are off-limits it does not follow that *homo economicus* is the only permissible model on this account of comparative institutional analysis. There are many ways interests can conflict not involving wealth-maximizers competing over scarce resources.<sup>15</sup>

For instance, we can model a society in which one-third of the population want to maximize social agenda A, one-third of the population want to maximize social agenda B, and one-third of the population want to maximize social agenda C, where there are shared points of overlap between the three agendas on varying issues. In such a society there is a conflict of interests. Moreover, different institutional arrangements will produce different states of affairs because these competing interests will be adjudicated in different ways. Saying that the point of comparative institutional analysis is to compare how different institutional regimes adjudicate competing interests does not inexorably lead to *homo economicus*. Instead, we would need to say that the point of comparative institutional analysis is to adjudicate competing *wealth-driven* interests over scarce resources. But as before, the narrower our account of comparative institutional analysis is the more implausible our account of comparative institutional analysis becomes.

The enterprise argument fails for two reasons. First, the enterprise argument fails because it employs a definition of comparative institutional analysis that seems unduly narrow. Second, even if we accept Brennan and Buchanan's account of the enterprise of comparative institutional analysis we still are not led to *homo economicus*. Depending on which version of the argument we go with we are only required to either adopt (1) a self-interested model of behavior (the general rational choice model or, at the very least, the general rational choice model with broadly non-tuistic utility functions) or (2) a model of behavior that induces some kind of conflict, even if this conflict is not over wealth. So even if we grant Brennan and Buchanan's implausible accounts of what comparative institutional analysis is, their conclusion still does not follow. The enterprise argument fails.

#### 4 The increasing costs argument

Much like the symmetry argument, the *increasing costs argument* in defense of *homo economicus* does not directly argue for *homo economicus*. Instead, the increasing costs argument argues against employing empirically informed

<sup>15</sup> In his explication of the circumstances of justice Rawls (1971/1999: 206) insists that, though in the circumstances of justice there is by definition conflict of interests, such conflict "can obtain under the most varied circumstances and from any number of motives."

behavioral models because doing so miscalculates the potential costs of bad behavior. In eschewing empirically informed behavioral models we then turn to *homo economicus*. Brennan and Buchanan present the increasing costs arguments in the following passage:

Models of behavior used in social analysis are often evaluated simply by appeal to the “facts.” It seems clear that to many analysts these “facts,” distilled from simple observation, from introspection about themselves in policy roles, or more elaborately from consultation of the historical record, suggest that those who hold discretionary power under a particular institutional regime will often be constrained by internal moral considerations from acting in a self-interested way. Suppose that this is so. Nevertheless, any model of behavior derived from a simple “average” of observed behavioral patterns will not be sufficient for comparative institutional analysis. An appropriate behavioral model will have to reckon with the fact that the harm inflicted by those who behave “worse” than the notional average will be proportionately greater than the “good” done by those who behave “better” than average. Accordingly, a bias toward the worst-case end of the behavioral spectrum is entirely justified. Specifically, *homo economicus* can be used as a model for comparative institutional analysis even when the empirical record (however described) indicates that its allowance for the relevance of public-interest motivations is inadequate.<sup>16</sup>

Though Brennan and Buchanan are correct in saying that employing a behavioral model based on the average actor should be avoided (or at least employed cautiously) they are not correct in saying that eschewing such a model requires we then employ *homo economicus*. Indeed, just as employing a model based on average behavior might underestimate future costs, employing *homo economicus* might overestimate future costs. Employing *homo economicus* could thus result in adopting a suboptimal constitution, just as Brennan and Buchanan argue adopting an empirically informed behavioral model could. *Homo economicus* falls prey to the exact same criticism Brennan and Buchanan give against employing an empirically informed behavior model. The very logic of the increasing costs argument can also be given *against* the employment of *homo economicus*.

Consider a very simple model. Suppose a community of 50 people must decide to either let the market provide a good or some collective choice institution. In making such a decision the community wants to compare the costs of the market providing the good to the costs of the collective choice institution doing so. Suppose that market provision of the good, because of predictable market failures, will result in welfare loss of 200 utility spread equally across society.<sup>17</sup> In predicting net welfare losses for our collective choice institution we need to construct a model predicting likely outcomes. But in constructing a predictive model for our collective choice institution we need to select a behavioral model. It is very important we select the

<sup>16</sup> Brennan and Buchanan (1985/2000: 67). See also Brennan and Buchanan (1983).

<sup>17</sup> Throughout this section my model assumes that all welfare losses are spread equally across all 50 members of our society.

correct behavioral model. This is because different institutions produce different states of affairs and thus different welfare losses given how individuals populating these institutions are modeled. Selecting the wrong behavioral model will give us bad predictions of future costs.

Suppose there are five relevant behavioral models available: model A, model B, model C, model D, and model E. We can line up our behavioral models on a spectrum of “best” behavior to “worst” behavior, where A is best (perhaps *homo moralis*) and E is worst (*homo economicus*). Models B, C, and D are mixes, let us say, of *homo moralis* and *homo economicus*. Model B will behave as *homo moralis* 75 percent of the time and *homo economicus* 25 percent of the time. Model C a roughly 50/50 split, and model D a 25/75 split.

How ought we model persons for the purpose of predicting the future costs of our collective choice institution? One answer is that we model persons as realistically as possible. We go out and collect data. We find that, on average, people are neither completely good nor are they completely bad. Most people are neither A’s nor E’s (though some people might be). Instead we find that, on average, most people are C’s. Because we want to be as realistic as possible in modeling our collective choice institution we decide to employ behavioral model C in constructing our predictive model.

Suppose we can more or less predict the welfare losses produced by different individuals acting within our collective choice institution. Each A individual produces a welfare loss of 1 utility, each B individual produces a welfare loss of 2 utility, each C individual produces a welfare loss of 3 utility, each D individual produces a welfare loss of 4 utility, and each E individual produces a welfare loss of 5 utility. Here, the costs of bad behavior increase at a linear rate as we move from the best behavioral model to the worst behavioral model. Since we have decided to model our collective choice institution employing behavioral model C we multiply the number of persons populating our collective choice institution (50) by the welfare loss caused by the C’s. We get a net welfare loss of 150. Since  $200 > 150$ , and since we want to minimize welfare losses, we decide to go with the collective choice institution rather than the market.

What is wrong with the above analysis? Nothing, if our assumptions hold. When listing the welfare losses each behavioral model imposes we assumed that the costs of bad behavior increase linearly. But the costs of bad behavior might not increase linearly. They might increase at an increasing rate. If this is true then an empirically informed behavioral model will not accurately capture the costs of collective action. Employing the most realistic behavioral model will systematically underestimate the costs of collective action if the costs of bad behavior increase at an increasing rate.

Consider another example. Suppose the costs of collective action per individual are like this: each A individual produces a welfare loss of 1 utility, each B individual produces a welfare loss of 2 utility, each C individual produces a welfare loss of 4 utility, each D individual produces a welfare loss of 6.5 utility, and each E individual produces a welfare loss of 9.5 utility. Now suppose that our society is distributed like this: 10 A’s, 10 B’s, 10 C’s, 10 D’s, and 10 E’s. As such, it is true that the median person instantiates behavioral model C. If we need to employ one

and only one behavioral model when modeling our collective choice institution then model C is the most realistic model. But even so, employing behavioral model C will now misrepresent the costs of collective action. If we simply employ behavioral model C then we will get an expected cost of 200, which is the same expected cost of the market. We should thus be indifferent between the market providing our good and a collective choice institution providing our good. But if we multiply the number of persons instantiating each behavioral model with the costs each such individual imposes when participating in collective choice then we find that the *actual* cost of our collective choice institution is 230. Since  $230 > 200$ , and since we want to minimize welfare losses, it now makes sense to go with the market over collective choice. We should not, as our model with the average behavioral model suggests, be indifferent between the two.

The take home from the above analysis is this. If the costs of collective choice increase at an increasing rate when shifting from good behavior to bad behavior then an empirically informed behavioral model of the average person will systematically underestimate the costs. To adequately capture these costs Brennan and Buchanan think we should employ *homo economicus*. Doing so will not underestimate the costs of collective choice.

But does the increasing costs argument really lead to the employment of *homo economicus*? We were worried about underestimating the costs of collective choice by employing an empirically informed behavioral model. But the exact opposite is possible if we fly to the other end of the spectrum. Employing only *homo economicus* might lead us to systematically overestimate the costs of collective choice. This could just as easily lead to a suboptimal institutional choice just as the employment of an empirically informed behavioral model could.

Here is an example of this. Suppose, in fear of underestimating the costs of collective choice, we model all 50 members of our collective choice institution employing the worst-case behavioral model E, where each person yields a net loss 9.5 utility. If this is true then our model will tell us that our collective choice institution will yield welfare loss 475, significantly greater than the actual welfare loss of 230. Moreover the difference between *homo economicus*' prediction of net welfare losses and actual net welfare losses is greater than the difference between behavioral model C's prediction of net welfare losses and actual net welfare losses. *Homo economicus* is less accurate than the empirically informed behavioral model in this case.

Now ultimately it does not matter in this particular case because both the actual costs and *homo economicus*' prediction of the costs lead to the same conclusion: that we should prefer the market over the collective choice institution. Things could have been different, though. Suppose that the market was predicted to lead to overall loss of 300 utility. In this case employing behavioral model C would still underestimate the costs of collective action at welfare loss 200 and thus tell us to employ collective choice; the actual costs of collective choice tells us that the costs are 230 and thus we should favor collective choice over the market; and the employment of *homo economicus* would lead to welfare loss of 475 which tells us to go with the market over collective choice. In this case, because of its overestimation, *homo economicus* gets the wrong answer. The actual costs of collective choice

are less than the actual costs of the market. We should go with the collective choice institution. But *homo economicus* says we should not. *Homo economicus* leads to a suboptimal institutional choice.

So employing *homo economicus* ubiquitously can lead to the same problem that employing empirically informed average behavioral models do. We miscalculate costs, and in doing so select suboptimal institutions. In light of this, what ought we do? How should we model collective choice institutions?

The best thing to do is to employ a mix of behavioral models that accurately represent a cross-section of society. We have some people who work selflessly for the public good, some people who are wealth-maximizers, and many people who maximize in some sectors and on some issues but who also display, at times, a sense of justice. If we are empirically informed about what sorts of behavioral models are instantiated in society then this is our best hope of capturing, as accurately as possible, the actual costs of collective choice. Of course, this might be difficult. For one, it might be hard to get accurate breakdowns of what sorts of behavioral models we find in society. Empirical findings might not be so easily categorized. Second, employing many different behavioral models might not be feasible. The models of collective choice institutions might get too complicated such that no determinate result can be produced. That said, Buchanan (in conjunction with Tullock) has employed some (admittedly very simple) models of voting in which multiple behavioral models are employed.<sup>18</sup> But still, very complex models of collective choice employing many different behavioral models might fail to induce an equilibrium result. If this is the case then the model will have very little use in comparative institutional analysis.

In light of these difficulties one might say that in such cases we should employ *homo economicus* because, although it might overestimate the costs of collective choice, it is better to overestimate the costs than underestimate the costs. When accurate calculation of the costs is not possible we should overestimate instead of underestimate.

It does seem plausible to suggest that when accurate calculation of costs is impossible we should overestimate the costs of collective choice rather than underestimate them. Even this argument does not entail the employment of *homo economicus*, though. Returning to our simple model running throughout this section: though behavioral model C underestimates the costs of collective choice, and supposing that we are unable to accurately calculate the costs, perhaps we should employ behavioral model D instead of worst-case *homo economicus* E. D might also overestimate the costs as *homo economicus* does, but the overestimation might be less than E. Though D might result in selecting suboptimal institutions (because it is not completely accurate), it is *less likely* to result in the adoption of suboptimal institutions than E because D does not overestimate the costs of collective choice as drastically as E does. Moreover, when D does miscalculate the costs it overestimates rather than underestimates. By the current argument, it ought to be preferred to *homo economicus*. Emphasis on overestimation fails to imply *homo economicus* as the uniquely justified behavioral model.

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<sup>18</sup> See Buchanan and Tullock (1962/2004: 131–138); Tullock (1959/2004).

As a final point, *even if* we accept the argument that we should employ the worst-case behavioral model in hopes of overestimating the costs of collective choice rather than underestimating the costs of collective choice instead of employing some worse-than-average-but-not-worst behavioral model (like D), it is still not clear that such an argument leads to *homo economicus*. This is because *homo economicus* is not plausibly the absolute worst-case behavioral model.<sup>19</sup> Consider, for instance, the *homo psychopathus* behavioral model, which says that people derive utility from watching other people suffer. Such a behavioral model is much worse than *homo economicus*. Government run by *homo psychopathus* will produce greater welfare losses than government run by *homo economicus*. So if instead of applying a behavioral model *worse* than average to overestimate the costs of collective choice rather than underestimate them we decide to employ the *worst* behavioral model imaginable then we will surely employ something besides *homo economicus*. There are worse things than politicians pursuing wealth. The increasing costs argument fails.

## 5 The crowding out argument

Inspired by Thomas Hobbes, the *crowding out argument* says that the presence of self-interested individuals in social interaction will force individuals who are not self-interested to behave as if they are self-interested as a matter of prudence. They do so to prevent self-interested agents from taking advantage of them. Brennan and Buchanan give the crowding out argument in this passage:

Our final argument in defense of the *Homo economicus* model is at least as old as Thomas Hobbes. It embodies the notion that when many persons are involved in a social interaction, the narrow pursuit of self-interest by a subset will induce all persons to behave similarly, simply in order to protect themselves against the members of the subset. As Hobbes stated, “Though the wicked were fewer in number than the righteous, yet because we cannot distinguish them, there is a necessity of suspecting, heeding, anticipating, subjugating, self-defending, every incident to the most honest and fair-condition.”<sup>20</sup>

Because the presence of a small number of self-interested individuals will force individuals that are not self-interested to behave as if they are self-interested it follows that everyone will behave in a self-interested manner. We should thus model institutions employing the *homo economicus* behavioral model to accurately capture this resulting state of affairs.

The problem with the crowding out argument is that it initially does not seem to justify employing *homo economicus* at all. The initial takeaway from the argument seems to be a simple reminder that the behavior of others can affect the price of different actions. Suppose agent  $x$  prefers to be altruistic, but has other preferences

<sup>19</sup> The two authors admit as much at Brennan and Buchanan (1983: 103).

<sup>20</sup> Brennan and Buchanan (1985/2000: 68).

as well: to make a decent living, to not be taken advantage of, to pursue her own goals within reason, etc. We might think that it is only institutional rules that affect the price of different actions for  $x$ . For example, a law requiring people go through a meddlesome and expensive background check before they can volunteer at a local community center raises the price of altruism. This might dissuade our altruistic agent from volunteering in lieu of other pursuits, making her act as if she is not altruistic even though her highest preference is to be altruistic.

The crowding out argument reminds us that it is not only institutions that change the price of actions but also the behavior of others. Suppose a wicked group of people does not want anyone to volunteer at the community center. To dissuade would-be volunteers the wicked group goes around and slashes car tires of those who do volunteer. This behavior, like our institutional rule, raises the price altruism. The behavior of the wicked group can raise the price of altruism to the point such that all altruistic people refuse to volunteer at the community center. As was the case with our institutional rule, altruistic people will act as if they are not altruistic at all. They appear to us, in not volunteering at the community center, as self-interested. Since the crowding out argument seems to only point out the fact that the behavior of others can influence the price of actions in a similar manner to how institutions influence the price of actions it is unclear how the crowding out argument is meant to justify *homo economicus* at all.

Here is a response to the above criticism of the crowding out argument. Though the crowding out argument technically only reminds us that the behavior of others can affect the price of actions, this warning, for all practical purposes, implies that all parties will end up acting as *homo economicus* does. The presence of some self-interested individuals raises the price of altruistic behavior to the point that everyone ends up acting in a self-interested manner. Because the end effect is everyone acting as *homo economicus* describes we might as well employ the behavioral model to capture this state of affairs. Note, under this interpretation of the crowding out argument, we are not saying that people become as *homo economicus* describes due to the behavior of others. We are saying that people who are not self-interested act *as if* they are self-interested because the price of other-regarding behavior is too high given the self-interested behavior of others. Because people who are not self-interested will end up acting as if they are self-interested we are justified in employing *homo economicus*.

The problem with the above response is that it assumes the behavior of others will have the *same* effect on the price of actions across all institutional arrangements and other variables. Self-interested behavior on the part of some will *always* result in otherwise altruistic people becoming completely self-interested. This is false. Different institutions and other factors as well can either exacerbate or mitigate the influence other people's behavior has on our own. We thus cannot assume that the presence of some self-interested persons will always raise the price of altruistic behavior so high such that everyone ends up being self-interested. There might be some institutional arrangements that sufficiently mitigate the effect self-interested people have on the price of altruism. As a result we should not ubiquitously employ *homo economicus*. We should examine, in each and every case, just how the

behavior of others, coupled with other institutional factors, affect the price of actions and thus the behavior of parties who are not strictly self-interested.

For example, consider Buchanan's work on the effect group size has on how the behavior of others influences our own behavior.<sup>21</sup> There are generally two ways of modeling individual rational choice. The first way of modeling rational choice assumes that one's behavior will not influence the behavior of others and vice versa. This is *parametric choice*. The second way of modeling rational choice does assume that one's behavior influences what others will do and vice versa. This is *strategic choice*. Buchanan's thesis about individual choice and group size is that the size of the group one interacts with determines whether one acts parametrically or strategically. If the group is large and impersonal then people assume their behavior will not have any effect on those around them. As such, if the presence of self-interested people threatens to harm an individual in a parametric choice setting then the individual will likely acquiesce in self-interested behavior as a matter of prudence. But suppose the individual is in a small group that repeatedly interacts where choice situations resemble more closely strategic choice versus parametric choice. If this is the case then the individual who is not solely self-interested will realize that her behavior *can* influence the behavior of others in the group, even the self-interested ones.

As a result something like a cooperative equilibrium might arise, where the naturally cooperative individuals cooperate because they prefer to and the self-interested individuals cooperate because doing so, in that small a group setting, is the best way of being self-interested.<sup>22</sup> If self-interested actors double cross altruistic actors the altruistic actors, because of the personal nature of the group and repeated nature of the social interaction, will be able to sanction self-interested actors for their bad behavior. We thus see the different effects self-interested behavior has on the behavior of those who are not self-interested based on the size of the group one interacts with. Large groups make it more likely that self-interested parties force those who are not self-interested to behave in a self-interested manner. Small groups can mitigate the effects self-interested individuals have on the behavior of others. Employing *homo economicus* regardless of group size, as Brennan and Buchanan would have us do, fails to capture this.

As another example, institutional rules can influence how much the self-interested behavior of others influences the behavior of those who are not self-interested. Consider an example. A town employs a simple majority collective choice rule to provide public goods to different sectors of the town. Imagine three scenarios under which the public good might be provided. Under scenario A the majority that passes a bill providing a public good decides how that public good will be financed. Discriminatory taxation is permissible. Under scenario B the public good is funded by equal-per-head taxes collected from everyone in the town. Under scenario C the public good is funded by only those whose sector of the town benefits from the public good.

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<sup>21</sup> Buchanan (1965/1999).

<sup>22</sup> As Axelrod (1984)'s seminal work shows, when playing iterated games a tit-for-tat strategy yields the highest sum payoff when played against a diverse panel of other strategies.

Suppose half the town is composed of people who are self-interested and want to maximize the public goods they receive at minimal costs. Suppose the other half of the town wants to maximize what they deem to be a fair and prudential distribution of public goods. We now ask: are the fair-minded citizens *equally likely* in scenarios A, B, and C to acquiesce in self-interested behavior in response to their fellow self-interested citizens? Probably not. In scenario A it seems likely that fair-minded citizens will acquiesce in self-interested behavior as a form of protection from discriminatory taxation. Otherwise, all public goods would go to a coalition of the self-interested at the sole expense of the fair-minded. In scenario B it seems less likely that fair-minded citizens will acquiesce in self-interested behavior. Because discriminatory taxation is impermissible, the cost of adopting a fair-minded approach to politics is lower. And in scenario C there is really no reason to acquiesce in self-interested behavior if one is naturally fair-minded. Those who want to maximize public goods will, by hypothesis, have to pay for them. The fair-minded citizens cannot be taken advantage of by the self-interested citizens.

This simple model shows how the effects of self-interested behavior can influence the behavior of others to varying degrees given different institutional arrangements. Because the effects of self-interested behavior vary the current version of the crowding out arguments fails. This version admits that, though the crowding out argument does not itself establish that we should employ *homo economicus*, it does for all practical purposes. This is because the self-interested behavior of some will *always* force others to behave in a self-interested manner. We have seen this is false. The crowding out of good behavior by the bad will be more or less exacerbated given varying institutional factors and other variables. Employing *homo economicus* ubiquitously misses this important truth. The crowding out argument fails.

## 6 Concluding section

This paper examined arguments offered in defense of employing the *homo economicus* behavioral model when engaged in the constitutional political economy research program, where *homo economicus* is defined narrowly as a wealth-maximizer. These arguments were: the symmetry argument, the enterprise argument, the increasing costs argument, and the crowding out argument. The paper argued that all four arguments fail.

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