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Public Choice

Provided in Cooperation with:
Springer Nature

Suggested Citation: Feld, Lars P.; Nientiedt, Daniel (2023) : The Freiburg School and the Virginia School: introduction to the special issue, Public Choice, ISSN 1573-7101, Springer US, New York, NY, Vol. 195, Iss. 3, pp. 193-196, https://doi.org/10.1007/s11127-023-01060-1

Public Choice (2023) 195:193–196
https://doi.org/10.1007/s11127-023-01060-1

The Freiburg School and the Virginia School: introduction to the special issue

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Received: 31 March 2023 / Accepted: 4 April 2023 / Published online: 11 May 2023

Abstract
This is the introduction to the special issue "The Freiburg School and the Virginia School: The Research Programs of Ordnungsökonomik and Constitutional Political Economy". It provides opening remarks and a brief overview of the individual articles.

1 Introductory remarks

James Buchanan was one of two persons to serve as honorary president of the Walter Eucken Institut in Freiburg, Germany, the other being Friedrich A. von Hayek. German ordoliberalism, especially the Freiburg kind, and Buchanan's constitutional economics are similar research programs aimed at studying rule-based economic interactions and outcomes (Vanberg, 1988).

Köhler and Kolev (2013) show that the rule-based liberal program of the Old Chicago School, mainly the works of Henry Simons and Frank Knight, developed at about the same time as the Freiburg School of ordoliberalism. Ordoliberalism emerged as a program to study the impact of rule-guided economic policy for economic outcomes. Buchanan, a student of Knight and Simons, would later also acknowledge that the Old Chicago School and the Freiburg School of Economics were close relatives (see his talk at the Summer Institute 2009 and Buchanan, 2010). It was therefore a natural step to organize a conference (held at the Walter Eucken Institut in Freiburg in December 2018) that not only addressed the similarities and differences between public choice/constitutional economics and ordoliberalism but also looked at future avenues for developing the research programs further.

Both programs have recently been at the centre of controversial public debates. Nancy MacLean (2017) attacked public choice by accusing Buchanan and his research group of planning a revolution to overthrow American democracy. Ordoliberalism was held respon-

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sible for the austerity measures in Europe after the financial crisis of 2008/2009 and the subsequent European debt crisis. The papers presented in this special issue rebut such accusations on multiple grounds.

2 The contents

Given that the Freiburg School preceded the Virginia School by more than two decades, we consider what the latter can learn from the former. In the first paper of this special issue, Lars P. Feld and Ekkehard A. Köhler (2023) critically reflect on the development of ordoliberalism over time. They argue that the German approach failed to keep up with key methodological developments in academic economics. They derive lessons for the future of constitutional political economy and address the challenges of the economic profession's growing empirical orientation.

Peter J. Boettke and M. Scott King (2023) highlight some of the less obvious features of the constitutional political economy approach. They explain the importance of Buchanan's notion of the "relatively absolute absolutes", his rejection of truth-judgments in politics, and his view of the role of the economist in political decisions.

Although ordoliberalism and constitutional economics emphasize the importance of rules, it is often unclear what these rules actually are. Alan Hamlin (2023) observes that constitutional political economy is usually not very explicit about the nature and definition of rules. His paper fills this gap by investigating the concept of a rule, the way in which rules constitute societal order, as well as other related questions.

Viktor J. Vanberg (2023) considers the relationship of liberalism and democracy more generally. He posits that by distinguishing between a definition of democracy that focuses on its institutional properties and one that focuses on its source of political legitimacy, the concepts of liberalism and democracy emerge as complementary rather than antagonistic.

Offering a different perspective on constitution-building, Hartmut Kliemt (2023) argues that Buchanan's criterion of unanimous consent at the constitutional level functions similar to the basic norm in legal positivism. Kliemt contrasts this with Buchanan's notion of conceptual (as opposed to actual) agreement, which, as he points out, is reminiscent of natural law thinking.

As mentioned before, both the Freiburg School and the Virginia School focus on rules and the choice amongst rules. Jan Schnellenbach (2023) describes the Freiburg School's arguments in favor of rule-based economic policy as well as their specific policy prescriptions. He notes that despite the school's general emphasis on rule-based policy, Eucken's core principles of a free market economy also include discretionary interventions.

The contribution of Roland Fritz, Nils Goldschmidt and Matthias Störring (2023) is concerned with the question of what distinguishes German ordoliberalism from the Anglo-Saxon variety of neoliberalism. They show that ordoliberals pay particular attention to the fact that the functioning of markets depends, in part, on the broader social and cultural context in which they are embedded.

The next papers engage with criticisms of the two schools. Michael Munger and Georg Vanberg (2023) investigate a frequent criticism of constitutional political economy, namely that the unanimity requirement favors the status quo over alternative political arrangements. The authors clarify the meaning and importance of this criticism while also pointing out the

issues associated with moving away from voluntary agreement as the criterion for the desirability of policy changes.

Malte Dold and Tim Krieger (2023) recount the debate about the supposed "ordoliberalization" of Europe during the Eurozone crisis. Looking back, they find that countries' ideological convictions hardly influenced their crisis responses. The authors also discuss ways in which ordoliberals themselves contributed to the politically motivated abuse of their research program.

The constitutionalism of the Freiburg School and the Virginia School corresponds well with the classical liberal views of their founders. However, at least the early ordoliberals perceived a tension between their emphasis on constitutional limitations to government power and democratic decision-making. Ekkehard Köhler and Daniel Nientiedt (2023) investigate whether this makes Eucken a representative of an authoritarian (i.e., anti-democratic) liberalism. They negate the claim.

Jerg Gutmann and Stefan Voigt (2023) close the special issue with a paper on positive constitutional economics by asking how constitutions could be made more resilient against the attempts by would-be autocrats to undermine them. Referencing Karl Loewenstein's concept of militant democracy (in the sense of a defensive democracy), they refer to such an attempt at constitutional design as militant constitutionalism.

Acknowledgements Finally, we want to express our sincere gratitude to the Thyssen Foundation that sponsored this conference. Without their financial support, the event would not have been possible. We would like to thank the referees of the papers assembled in this special issue. Ekkehard Köhler and Viktor Vanberg deserve special thanks for co-organizing the conference. Last, but not least, we want to thank the editors of Public Choice, particularly Bill Shugart for his support and patience in finishing this special issue and Pete Leeson for accelerating the publication.

Funding Open Access funding enabled and organized by Projekt DEAL.

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