

# Moral Community and Moral Order: Developing Buchanan’s Multilevel Social Contract Theory

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**Abstract:** This work aligns James Buchanan’s theory of social contract with the structure of Michael Moehler’s multilevel social contract. Most importantly, this work develops Buchanan’s notions of *moral community* and *moral order*. It identifies moral community as the vehicle of escape from *moral anarchy*, where community is established upon a system of rules akin to James Buchanan’s first-stage social contract. Moral order establishes the baseline treatment of non-members by members of a moral community and also provides a minimum standard for resolving disputes that are not resolved by the more robust social contract shared among community members. This work links the multilevel contract to polycentric social order, noting that polycentric systems may promote development of the moral order by enabling experimentation with and emulation of rules and rule systems made available by overlapping and adjacent institutions.

**Keywords:** contractarianism, social contract, political economy, Michael Moehler, James M. Buchanan

**JEL Classification:** B13, B15, B25, B31, B52, P50, P51

In his recently published work, *Minimal Morality: A Multilevel Social Contract Theory*, Michael Moehler (2018) argues that James Buchanan’s approach to the social contract cannot include significant moral diversity. This is because the second stage of Buchanan’s social contract—post-constitutional exchange—depends on the normative content of the first-stage contract, making Buchanan’s formulation inappropriate for a pluralistic society. Moehler believes that the multistage contract is incompatible with a multilevel contract—a contract that limits the moral demands of a particular community on non-members adjacent to or coexisting within that community. He critiques Buchanan’s formulation of the social contract on

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AUTHOR’S NOTE: This article was greatly benefited by the comments of the referees. The author is indebted to Tatiana Romanovskaya for useful comments, and encouragement. All mistakes are my own.

the grounds that the history of the first-stage contract cannot be scrutinized by agents subject to it. Moehler argues that for deeply diverse societies, the resolution of conflicts derived from historical injustice cannot be facilitated by Buchanan's multistage contract. For Moehler, Buchanan's theory grants a normative preference for the status quo that can lead to implacable conflict in a society with significant moral diversity.

Although Buchanan considers more complex characterizations of human behavior, the core of his analysis in *The Limits of Liberty* ([1975] 2000), hereafter referred to as *Limits*, demands only that instrumentally rational agents be capable of choosing to submit reciprocally to the demands of the social contract. Moehler establishes prior assumptions concerning the prudent behavior required for cooperation in a morally diverse society. Moehler's work concerns elements of justice he believes to be requisite for the healthy functioning of a diverse, liberal society. He describes an ideal moral order under the heading of the *weak principle of universalization*. This principle includes a basic income guarantee that supports bargaining above some minimal level of income by instrumentally moral agents who follow a weak Kantian imperative to solve conflicts peaceably. Moehler recognizes that assumptions made in application of his multilevel social contract theory may be different from those he prefers (Moehler 2018, 161–162, 181–184).

For example, Moehler chooses to resolve the potential conflicts concerning the legitimacy of the status quo by “the introduction of the unconditional subsistence income [that] represents a viable productivist policy that minimizes destructive actions, administration costs, and the costs associated with free riding” (2018, 200). He also recognizes that, more generally, so long as bargaining agents expect to be made better off by negotiations under the status quo, they “may agree to employ the existing status quo as a basis for conflict resolution in order to ensure the benefits of peaceful long-term cooperation at least in the future, as suggested by James Buchanan” (2018, 162).

Moehler's approach has much in common with Buchanan's framing. Both follow a contractarian approach. However, unlike Moehler, Buchanan intentionally avoids committing his agents to a Kantian categorical imperative. Instead, he develops an incentive-compatible escape from Hobbesian anarchy without deviating from the assumption of instrumental rationality *before* the social contract has been established. After establishment of the social contract that defines a community, members submit themselves to a structure of rules with the expectation of a reciprocal

submission by others. Optimizing over a longer time horizon, instrumentally rational agents choose to operate under a civic morality (Congleton 2018). This reciprocal submission to given ethical and moral criteria cannot itself lead to an inclusive social contract amongst morally diverse agents. On these grounds, Moehler critiques Buchanan's ([1975] 2000) contractarian approach. *Limits*, however, was part of a more general project that started at least a decade before the publication of the book. This project concerned the social contract and individual ethics. Perhaps due to its nascency, Buchanan's later development of this project is omitted from Moehler's analysis.

Together with his earlier work, Buchanan's later work provides a multilevel theory of the social contract that employs a robust formulation of human agency. As in *Limits*, agents may follow rules that constrain their behavior, limiting short-term gains, with the expectation that others will follow the same set of rules. Buchanan even goes as far as to claim that the members of a *moral community* self-identify with their community and with the set of beliefs entailed in community membership. In other words, Buchanan claims, community members express collective intentionality (Searle 1995, 2005). These agents exist within exclusive moral communities supported by a civic morality (Buchanan 1965, [1981] 2001a). Each member acts in accordance with the community's social contract with the expectation that other members do the same. This is made possible by the exclusivity of membership. Buchanan also observes a more general *moral order*, but fails to explain how this moral order might arise.

I develop Buchanan's multilevel social contract theory in a manner coherent with his multistage contract, thereby showing that Buchanan's later work is compatible with his earlier work. In developing Buchanan's theory, I will show that it is possible to establish an evolutionary theory of the social contract that is compatible with rational choice theory, and that generates outcomes comparable to a Kantian approach while relying on less burdensome assumptions about human behavior. I will use Buchanan's multistage contract to explain the development of moral community.

Buchanan's ([1975] 2000) two-stage social contract uses rational choice theory to explain the formation of communities around an initial social contract coherent with the allocation of resources and power present in *moral anarchy*. Short-sighted utility maximization in Hobbesian anarchy gives way to a civic morality that includes a shared expectation

of reciprocation among community members (Buchanan 1965, 3: social state 5; Congleton 2018, 40). When “two persons accept limits to their own freedom of action [...] [t]he first leap out of the anarchistic jungle has been taken” (Buchanan [1975] 2000, 77). Buchanan scales this logic from agreement between two members to agreement between all community members.<sup>1</sup>

The same formulation holds for the development of moral order between and within moral communities that have otherwise escaped moral anarchy. This second level of the social contract develops out of the need to settle and minimize intercommunity conflict. This analytical nesting generates a multilevel theory that only requires a disposition toward rational norm-following of the community members and participants to conflict that cannot be settled according to a first-level social contract.

The argument will proceed as follows. First, I will introduce Buchanan’s multistage framework. I contextualize the multistage framework in light of its relevance to Buchanan’s work on moral community. I follow with a summary of Moehler’s multilevel framework. I argue that moral order develops and spreads along similar lines as a consequence of the interaction between moral communities. This nested analysis confronts Gaus’ argument that “[t]he rational strategy in large groups is to refrain from investing in norm change” (2018, 130). This is because the analysis takes moral communities as inputs that facilitate the development of a moral order. Viewing agent identity in the light of community membership allows for the conceptualization of a meta-social contract that binds interacting moral communities: the moral order.

## BUCHANAN’S PATH OUT OF ANARCHY

One essential problem that arises with Buchanan’s two-stage contract theory is that the normative content of the first-stage constitutional contract forms the basis for the second-stage post-constitutional contract. [...] For Buchanan, this feature of his social contract theory is unproblematic, because ‘[t]he status quo defines that which exists. Hence, regardless of its history, it must be evaluated as if it were legitimate contractually.’ In other words, Buchanan’s political social contract theory simply assigns normative authority to the status quo, and, more importantly, makes the normative content of the second-stage contract dependent upon it.

— Moehler (2018, 159)

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<sup>1</sup> For larger communities, see Buchanan’s discussion of “Defection and Enforcement” ([1975] 2000, 83–88).

Buchanan ([1975] 2000) presents a two-stage social contract, noting that economic theory has typically dealt with the second stage, which he refers to as post-constitutional exchange. In the first stage, violence has not been contained by a social contract. Violence might be used to repossess resources from those less able to defend themselves, leading to costly investment in defense due to anticipation of predation (Buchanan [1975] 2000, 69–77). In the second stage, with ownership delineated, agents may engage in welfare-improving exchanges and agreements that are subject to the precedent constitution. Buchanan's goal was to provide an economic explanation for the development of institutions that undergird social cooperation and support the second-stage contract comprised of economic exchange. Here, I will concentrate on the first stage and its relation to moral community. In my later presentation, I will presume that the very first moral community must have developed by this process and that every other moral community either develops by this process, exists within and is supported by an existing moral community, or is the result of a split of an existing moral community.

The initial development of cooperation in *Limits* does not depend on a common moral frame. It begins in a world of Hobbesian anarchy where life is “nasty, brutish, and short” (Hobbes [1651] 1968, 186). In this setting, the strong may plunder the weak and battle amongst themselves. Agents are instrumentally rational, meaning that they are not constrained by an ethical disposition that is defined by a categorical imperative. Assuming that interactions are repeated, it may benefit both the plundered and the plundering to develop arrangements that make both better off (Olson 1993). Buchanan admits that, in this theoretical setting:

The disarmament contract that may be negotiated may be something similar to the slave contract, in which the ‘weak’ agree to produce goods for the ‘strong’ in exchange for being allowed to retain something over and above bare subsistence, which they may be unable to secure in the anarchistic setting. (Buchanan [1975] 2000, 78)

Hobbes' solution to this dilemma is for the members of society to adopt a common morality—in the form of a universal social contract—and to submit to a sovereign who is tasked with the administration of that contract. Buchanan escapes the Hobbesian dilemma by a naturally occurring incentive structure. Like Hobbes' solution, *Limits* presents only the social contract—indicating a shared morality—of a single community. Absent this social contract, Hobbesian anarchy predominates. If agents were to

return to such an anarchical state, they would operate according to purely instrumental rationality where behavior is only constrained by access to resources, especially for defense and coercion.

This is only the starting point for social relations. Once behavior is submitted to the rules of the social contract, opportunistic behavior that would threaten a return to anarchy is quelled by the expectation of mutual defection. As the human agent participates in a community, he or she necessarily chooses “between separate *rules* for behavior” and not “between separate *acts* in particular circumstance” (Buchanan 1965, 2). For Buchanan, an individual’s choice to “adopt the moral law or the expediency criterion as an ethical rule surely depends upon his own predictions about the behavior of others” (1965, 2-3). In his description of the status quo, Buchanan recognizes that enforcement operates adjacent to “ethical constraints on individual behavior” ([1975] 2000, 99). The weaker those internal constraints, the greater the costs of enforcement required to correct behavior that deviates from the status quo. This can be corrected by bargaining over the status quo to align it with renegotiation expectations. The contract thus evolves with its standards being internalized by approving participants. Otherwise, an increased level of costly enforcement will be required to maintain the social contract and avoid a return to anarchy.

It is only by the development and sustainment of a shared understanding of one’s position in the imminent hierarchy of social positions, and the *deontic powers* associated with these positions, that a network of actors can move out of Hobbesian anarchy.<sup>2</sup> Although Buchanan concentrates on a political theory of social contract in *Limits*, that discussion is supported by an ethical understanding of the human agent that is consistent with his earlier work (Buchanan 1965). To submit to a social contract, then, is to submit to a set of rules defining rights, duties, and obligations concerning one’s role in society (Searle 1995, 2005, 2006). Development out of anarchy is facilitated by a mutual recognition of the social contract. The contract is held together, at least initially, by a commitment to a civic morality: a reciprocal expectation of commitment among community members (Buchanan 1965; Congleton 2018). Otherwise, cooperation might fail due to opportunistic behavior not bound by social rules. By common adherence to a civic morality, community members interact

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<sup>2</sup> Just as Buchanan recognizes bargaining as playing a role in the evolution of a social contract, John Searle argues that a social contract exists anywhere “you have a community of people talking to each other, performing speech acts” (2005, 2). See also the *deontic operators* presented by Crawford and Ostrom (1995).

according to a shared structure of expectations that facilitates cooperation (Buchanan [1975] 2000, 114). As members begin to take for granted the status quo embodied in and including the social contract, the identity of members becomes bound in a moral community (Buchanan [1981] 2001a, 188). Mutual expectation increasingly takes the form of wholehearted submission to the community's social contract.

### MORAL COMMUNITY AND MORAL ANARCHY

The initial stability provided by Buchanan's formulation of the social contract in *Limits* enables the development of moral community as it forms a basis for bargaining within the contract.<sup>3</sup> Moral community logically precedes moral order. This being the case, it is not surprising that Buchanan did not distinguish between moral community and moral order until several years after *Limits* was published. To clarify the meaning of moral order, which I later elaborate, it will help to first distinguish between moral anarchy and moral community.

Taken as a positive demonstration, rather than a normative formulation, the problem is precisely how one might construct a theoretical escape from moral anarchy. Not only must this description allow for an escape, it must also explain how the social contract keeps moral anarchy at bay. In *Limits*, moral anarchy is overcome by Buchanan's development of incentive-compatible equilibrium arrangements. Once instrumentally rational agents develop incentive-compatible relations amongst themselves, the long-term result is the development of shared practices that lead agents to resist change in strategy—unlike instrumentally rational agents whose mode of behavior is not constrained by a shared structure of rules. Strategy bounded by social rules develops through a process of bargaining (Bourdieu 1990, 122–134). When participants successfully bargain, the status quo is moved closer to “renegotiation expectations”—terms that negotiating parties will voluntarily accept—making the adherence to the social contract less costly and, therefore, less dependent upon enforcement via coercion (Buchanan [1975] 2000, 98).

Buchanan's price-theoretic analysis bootstraps the development of moral community out of moral anarchy. Once a shared rule structure has stabilized through the development of incentive-compatible strategies, that structure guides behavior within the moral community. Once the bargaining over rules by instrumentally rational agents has led to a

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<sup>3</sup> At this point of the development of his theory, Buchanan used the term ‘community’ without the descriptor ‘moral’.

satisfactory arrangement given access to violence and other resources, community is the inevitable result. Community members submit their rationality to the shared rules and values of the community.<sup>4</sup> These agents optimize, but they do so within the constraints of the shared frame of their moral community and the margin of influence that they may manifest over that framework by renegotiation, whether formal or informal.

Membership in the community may thus be valued as an approximation of the expected benefits from the stability of community structure. A conception of the common good is tangible at the level of the moral community. Members share a common conception of the deontic powers associated with membership, identifying themselves with the community (Buchanan [1981] 2001a, 188; Searle 2005, 2006). The result is that inside the moral community, members form a collective ensemble by submission to a robust shared rule structure that coalesces with their private lives. The good of the members is aligned and even identified with the good of the community. Members procure a bundle of goods for which they are willing to incur the costs of membership that entails shared beliefs and behavioral constraints. The social space between communities, at worst, exists as a moral anarchy when there is no shared moral structure aside from the null set and, at best, operates as a moral order with norms shared between communities, analogous to Moehler's *minimal morality*.

### MOEHLER'S MULTILEVEL SOCIAL CONTRACT

Moehler critiques Buchanan on grounds that a multistage social contract depends upon a single shared morality. In modern liberal societies, we interact with individuals holding diverse beliefs and moral commitments. In these societies, individuals cannot demand or expect acceptance of the full set of their own beliefs in interactions with those who are not members of their community. Under these circumstances, the Hobbesian solution of a single morality and a single sovereign is insufficient. This may seem innocuous, but some beliefs concerning justice may be conflicting. Having only a single social contract—as opposed to allowing for multiple

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<sup>4</sup> In this respect, agents who operate within the rule structure of their community benefit in a manner similar to Gigerenzer and Brighton's (2009) description of the *homo heuristics* agent who intentionally ignores some information. Like Smith (2003) and Dekker and Remic (2019), the approach here concentrates on shared rules. Agents within a community intentionally ignore some strategies as those strategies would conflict with membership within a community: the loss of membership would deprive the agent of the bundle of goods made accessible by membership.

instances in the form of distinct communities—does not allow for the development of inclusive moral commitments that transcend a particular community and facilitate conflict resolution through bargaining between agents with distinct, and perhaps opposing, beliefs.

Moehler's multilevel theory, for the second-level contract, relies on one core principle (the weak principle of universalization). This principle "constitutes the 'second contract' into which the members of society enter" where agents strive for peaceable conflict resolution according to a "morality in the form of 'each according to her basic needs and above this level according to her relative bargaining power'" (Moehler 2018, 18). The weak principle entails two conditions:

*First*, it [the social contract theory] must ensure that, in each instance, agents can defend their interests maximally based on their actual capacities in the world in which they live, ensuring that agents receive a share of the goods in dispute that is proportional to their relative bargaining power. *Second*, and as a potential constraint on such behavior, it must ensure that agents can maintain their existence as separate agents and satisfy their basic human needs as a basis for conflict resolution (minimum standard of living), if the goods that are in dispute permit it. Any viable principle of conflict resolution that can ensure stable peaceful long-term cooperation among rational prudential agents in the real world must satisfy these conditions. (Moehler 2020, 49–50; emphasis mine)

The first condition of the principle is compatible with Buchanan's formulation of the social contract in *Limits*. The resultant distribution depends upon the resources controlled by each agent and the judgment employed over these resources.<sup>5</sup> Moehler's second condition is more demanding than Buchanan's framework. Buchanan's bargaining agents operate initially using instrumental rationality. They are capable of threatening a return to moral anarchy to increase their leverage in bargaining. Moehler's agents, in contradistinction to this possibility, use instrumental morality where members "have an overarching interest in ensuring peaceful long-term cooperation" (2020, 57). Any threat to return to moral anarchy lies outside the bounds of the weak principle of universalization.

Moehler's weak principle of universalization is a modified Kantian categorical imperative. He refers to those acting according to this principle as *homo prudens*. The weak principle must be accepted by all members

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<sup>5</sup> Here, I am drawing specifically from Frank Knight's (1921) emphasis on the entrepreneur's exercise of judgment over resources in his control. Not coincidentally, Knight was Buchanan's advisor during his graduate studies (Wagner 2017).

of society to maintain peace. The theoretical limitations of the instrumentally moral agent constrain the damage that can be done by Hobbes' *Foole* (Gaus 2013; Moehler 2014). At the first level of morality, agents are presumed to have internalized a robust local morality. At the second level of morality, which handles cases where an accepted set of solutions has not yet been developed, instrumentally moral agents bargain under only the minimal constraint of Moehler's weak principle of universalization (Moehler 2018).

Moehler's second level operates in two scenarios. In the first case, two members of the same moral community, to use Buchanan's language, may be involved in conflict that cannot be straightforwardly solved by the community's social contract. The thick morality of the community simply cannot be applied to this category of cases. The development of a solution to such conflict entails an attempt by either party to attain maximum value given the minimal constraint provided by Moehler. This is simple enough to imagine within a given community where all actors share a common moral frame. And, in the real world, they would be nested in a common community of interacting individuals capable of observing the interaction and of forming judgments in light of the strategies used by the other agents. These judgments would then frame future interactions between these bargaining individuals and the rest of the community.

The more difficult scenario occurs when conflict exists between members of different communities. The weak principle of universalization places constraints on the extent to which two interacting communities might differ. If, for example, one or both individuals pertinent to conflict are from a community where "eradication of human beings or certain members of society [is believed] to be the overarching goal", then Moehler's theory "could not harmonize the interactions among agents on terms which all members of society could agree" (2020, 60). In order for the theory to be applicable, an action from any participant must be bound by the weak principle of universalization.

This highlights a significant distinction between Buchanan and Moehler. Buchanan concerns himself with harmonization that results from bargaining alone. Buchanan's purpose is not to present a theory of justice, even if one is implied by his theory's acceptance of the status quo. Outcomes quite often will cohere with the end state promoted by the weak principle of universalization. Yet for Buchanan, if a stronger party does not submit his or her behavior to the contract of a moral community and if he or she expects no net benefit from establishing any sort of

cooperation with a weaker party, then actors remain in moral anarchy. In the final state of analysis, no cooperation occurs. Whatever plundering or murdering a sufficiently strong party had intended will occur so long as the expected benefits of the action exceed the expected costs. Before an incentive-compatible social contract is developed, the theorist cannot, as the saying goes, dispute preferences (Stigler and Becker 1977).

In reflecting upon institutional change, Buchanan observed:

In economists' terminology, institutional-constitutional change operates upon the constraints within which persons maximize their own utilities; such change does not require that there be major shifts in the utility functions themselves. (Buchanan [1981] 2001a, 201)

Of course, Buchanan recognized elsewhere that individuals can engage in *personal* development that might even include radical transformation (Buchanan [1979] 1999), but his concern in his work on the social contract was *institutional* development. After interacting agents develop a social contract where the more powerful agree to constrain their capacity for violence—or concomitant with that development—Buchanan's agents take on a substantive ethical dimension. Then, community members can generate moral and constitutional artifacts that members can reflect and act upon in effort to transform the community, its purpose, and their roles in it. By this process moral diversity can be supported by the development of a moral order.

### **BUCHANAN, MOEHLER, AND KANTIAN COMMITMENT**

Buchanan's formulation of the social contract omits the weak principle of universalization. Throughout his work, Buchanan intentionally avoids such a Kantian commitment when explaining the development and sustainment of social cooperation (1965). Buchanan describes an ongoing bargaining process that motivates buy-in from those self-interested actors subject to the social contract who may consider moral anarchy—a state where individuals are treated as means to ends, with no moral parameters constraining this treatment—as a viable alternative to the status quo.

Buchanan intentionally avoids “external ethical criteria [...] imposed on the existing structure” that “tended to distract effort and attention from the less romantic but more productive approach involved in working out possible compromise modifications that would be agreeable to large numbers of persons in the community” ([1975] 2000, 111). A return to

moral anarchy is included in the option set available to Buchanan's agents in the bargaining process. It is a risk that must be considered by all parties involved. From this vantage point, history is littered with constitutional moments that take the status quo for granted but, by the very existence of bargaining over the social contract, do not treat it as immutable. Rather than demand historical justice, Buchanan's agents accept that they can, at best, express influence over the evolution of the social contract.

Moehler critiques this approach by Buchanan. Moehler's agents demand recompense for injustice across generations, as this affects the incumbent distribution of resources. Otherwise, they might also consider the return to anarchy a viable option, which would violate the weak principle of universalization. Buchanan's multilevel social contract does not directly provide the justice demanded by Moehler. It does not necessarily forbid such attempts, but provides them no special status in the bargaining process. Taken as a whole, both theories exhibit significant overlap. Moehler recognizes many of the features presented by Buchanan, viewing them as cases where the weak principle of universalization is violated.

With the purpose of describing social evolution in mind, Buchanan argues that gains from peace may be valued independently from social history and may themselves be sufficient to offset animosity derived from an initial injustice. The only requirement of the contract is that agents value their own positions—with those positions' incumbent mix of wealth, rights, and duties—well enough to temper each other's demands for historical justice. This does not, however, prevent agents from presenting utility maximizing demands in the form of claims about justice. These claims may demand a social contract with a set of rights “insupportable in anything that might resemble genuine anarchistic struggle”, and so “when presented under the disguise of justice [modifications to the social contract] tend to attract support from those elements of the community whose primary motivation is to arrange preferred redistributions of rights among *others*” (Buchanan [1975] 2000, 104). For Buchanan, this demand for historical justice may influence the development of a social contract, but this is not an inevitable outcome. Moehler's second level strictly demands that the weak principle of universalization is adhered to. He asserts that “[i]f the members of society do not regard the status quo to be justified, then they may demand compensation first before they fully accept the demands of the weak principle of universalization” (Moehler 2018, 162). For Moehler, an initial administration of distributive justice via something comparable to a basic income guarantee is

a more obvious path to maintaining submission to the weak principle, which supports the peace required for a liberal society.

### **SOCIAL CONTRACT: STAGES AND LEVELS**

Moehler's more serious concern with Buchanan's framework is that it lacked a well-developed theory of a multilevel social contract comparable to Buchanan's two-stage social contract theory. Presumably, this is the reason for Moehler's focus on the framework presented in *Limits*. Although a multilevel social contract is absent from *Limits*, multilevel analysis appears several years later in Buchanan's Abbot Memorial Lecture, "Moral Community, Moral Order, and Moral Anarchy" ([1981] 2001a) and in the shorter "Moral Community and Moral Order: The Intensive and Extensive Limits of Interaction" ([1983] 2001b). In the first of these lectures, Buchanan acknowledges in a footnote ([1981] 2001a, 187n1) that the work contributes to the same project as *Limits*. Buchanan's work presents a *positive*, rather than a *normative*, multilevel theory of social contract.

One might argue that Moehler's theory indicates the bounds within which a social contract may operate absent resort to unsanctioned violence. Moehler's formulation concerning the requirements for a society of *homo prudens*—provision of a minimum level of income—goes beyond a general description of the problem. It cannot consider situations where, faced with a decision between significant loss—for example, death—and rebellion against the standards set by the social contract, individuals may well choose rebellion.

Still, there is no escaping the economic logic of anarchy without accepting the status quo as a frame of reference in Buchanan's framework. As Moehler points out, Buchanan implicitly "assigns normative authority to the status quo" that is generated from the initial distribution of resources in anarchy (Moehler 2018, 159). He does not, as Moehler, assert the principles by which a pluralist liberal moral order might be peacefully sustained. Rather, he explains how social order might arise from moral anarchy.

Next, I will elaborate Buchanan's theory in light of the rich structure provided by Moehler. Unlike Moehler, I will not emphasize the weak principle of universalization. Like Buchanan, I presume that return to moral anarchy is always an option for individuals who bargain over the social contract. In doing this, I present a theory of a process that describes the move from moral anarchy to a world with moral community and, eventually, moral order.

Buchanan defines the moral order in terms of binary interactions and relations—equality defined by abstract rules—as opposed to roles whose deontic powers stem from the hierarchy of the moral community. Under the moral order, individuals regard one another as legal and moral equals. The moral order necessarily represents the minimum standard by which agents from differing communities interact. It is analogous to Moehler’s second-level social contract, a minimal morality, and includes Moehler’s particular formulation as *one* possible manifestation of the moral order.

Buchanan elaborates the system of rules defining a moral order using his visit to Austria as an example:

I did not qualify for membership in the Viennese or Austrian moral community at all. But I was able to survive well by a knowledge of and adherence to a system of rules that involved a mutual respect for the rights of property, that of my own and those of persons with whom I had dealing! It is easy to imagine the difficulties I might have encountered in a genuinely ‘foreign’ land that was not characterized by such agreed-on rules of behavior and in which, quite literally, I should have to depend upon the genuine ‘morality’ of others to survive. (Buchanan [1983] 2001b, 209)

The moral order is the domain of interaction subject to the minimal set of rules of the second-level social contract. This includes not only rules, but also the expectations derived from these rules, and the interaction facilitated by this expectation. The moral order is distinct from moral community in that the rules that support the moral order allow individuals to “treat each other as moral reciprocals” (Buchanan [1981] 2001a, 189). Without a shared moral order that allows for peaceable interaction amongst relative strangers, one is entirely dependent upon the moral attitude of community members toward outsiders.

Buchanan’s notion of moral order must be developed with special reference to the robust description provided in *Limits*. All that is required for a particular instance of the social contract to be adopted is “that this assignment is mutually accepted” so that “mutual gains may be secured from the consequent reduction in defense and predation effort” (Buchanan [1975] 2000, 78). As Gerald Gaus observes, “Hobbes’s problem remains our problem, even if we recoil at his solution” (2013, 278). That problem is to “resolve the ‘foundational crisis’ of morality” (D’Agostino, Gaus, and Thrasher 2017). This is true for the social contract governing behavior within *and* between communities. When individuals from different communities interact, there exists a greater possibility of

opportunism among bargaining parties. Without something like the weak principle of universalization shared between bargaining parties, there is great potential for theft and destruction. The moral order is a shared social scaffolding that mitigates the occurrence of opportunism, which would otherwise occur in a moral anarchy.

Moral order can only develop once moral communities have been formed by the process outlined above. The development of the moral community informs our understanding of the moral order. Where Moehler proposes that the weak principle of universalization cannot be derived from the first-level contract, my framework holds a shared minimal morality—Buchanan’s moral order—as an *artifact* of moral communities. The treatment of community members in cases where the social contract of the moral community cannot facilitate conflict resolution provides a baseline for the treatment of outsiders by community members.

As in Moehler’s formulation, agents subject to a first-level contract—members of a moral community—share a thick moral frame. The second level exists, as Moehler suggests, in cases where the social contract of a given moral community is unable to solve a conflict because (1) the contract is ill-suited to resolve the conflict, (2) the agents in disagreement are subject to two distinct social contracts whose dissimilarities do not allow either contract to facilitate sufficient resolution of the disagreement, or (3) one of the agents subject to the conflict has no moral community and the thick moral frame of the other agent does not present a solution acceptable or applicable to the non-member (see Figure 1).

Moehler asserts that the second-level contract cannot be derived from the first-level contract. Otherwise, conflicts that are not facilitated by the first-level contract would lead to resolution consistent with anarchy. This claim can be clarified by elaboration on case (1) above. If the membership in a moral community is itself valued by the bargaining parties, then norms within the community concerning violence among members will at least be submitted to by bargaining parties. The solution reached will be subject to at least the most primitive confines of the community’s social contract. Thus, bargaining under conditions of ambiguity by members who value their positions will likely develop the community’s social contract subject to Moehler’s weak principle of universalization.

Second-level morality is relevant for intra-communal conflict that cannot be resolved by first-level morality. It represents a baseline for the treatment of all members within that community in cases where the

## TYPES OF CONFLICT

CASE	INTERACTION TYPE	DESCRIPTION	RESULT
(1)	Intra-communal	Conflict between community members not resolved by the existing terms of a thick shared moral frame.	Defer to the community's most primitive principles supporting conflict resolution.
(2)	Inter-communal	Conflict between members of different communities not resolved due to a lack of thick shared moral frame.	Defer to principles commonly held between communities.
(3)	Extra-communal	Conflict between a community member and an individual who is not a member of any community. The non-member lacks any thick moral frame.	Defer to the community's standard treatment of non-members.

**Figure 1:** Three cases where the social contract of a moral community cannot resolve a conflict.

shared thick moral frame fails to facilitate the resolution of conflict. Likewise, second-level morality indicates the standard treatment of non-members. In this sense, the moral order promoted by a community is endogenous to its most basic shared moral presuppositions. If conflict is resolved by violence, on the other hand, then the community has either failed to consult its most essential moral presuppositions or those presuppositions accept subjugation of the weak by the strong.

Case (2) is more difficult. Its resolution can inform case (1). In the first case, members bargain over the structure of the social contract and each member's position under it. Membership in the same moral community facilitates bargaining as each member accepts the existing contract as status quo. The transformation of the social contract prevents conflicts from leading to deterioration of the social contract. Disregard for rules that bind the members' behavior, especially in regard to unsanctioned violence—that is, violence not condoned by the social contract, especially not exercised under particular circumstances that legitimate its use—threaten the integrity of the social contract. When conflicting parties are not members of the same community, they do not necessarily have the same primitive set of moral presuppositions upon which to rely in forming expectations. This is because these conflicting parties do not share the same thick moral frame. If both parties share a thin moral frame in the form of a minimal set of moral presuppositions, then they could engage in bargaining over these terms. The development of a solution

provides a basis for future cases of conflict resolution between these two communities.

Buchanan reflects on this distinction by noting that within a moral community that lacks a moral order, “[s]ince the individual person in such a setting thinks of himself as a member of this community rather than as an individual, he will more readily acquiesce in what would seem overtly unfair treatment under the moral order” ([1981] 2001a, 195). If the interaction within a moral community is not also framed by the impersonal standards of the moral order, the boundaries of the moral community are moral anarchy, providing all the more reason to acquiesce to what those of us with modern sensibilities would consider violations of, for example, the rule of law.

The second level also reflects the treatment of non-members acting within existing moral communities who together participate in a shared moral order. Non-members have no position within the moral community’s hierarchy and therefore—when attempting to order their interaction with community members—are benefited neither by an ongoing conversation within the moral hierarchy, nor by a robust, shared moral frame. A community’s treatment of non-members reflects the community’s most basic moral presuppositions concerning the interaction with other human agents and, as mentioned above, likely indicates the bounds of treatment that members are willing to endure for the good of the community. In the case of Moehler’s framework, for example, communities that also accept the weak principle of universalization for conflict not successfully mediated at the first level are protected from moral anarchy by the second-level social contract. Members *and* non-members are afforded this protection.

Difficulty occurs, however, if bargaining at this second level breaks down. Under conditions where parties are unable to agree on the terms of resolution, dispute may descend into violence. Similarly, Moehler defines his principle as ‘weak’ because he acknowledges that members of a community may find themselves in conflict with non-members, despite a preference for the opposite, if violence from the outside party cannot be effectively mitigated. This is consistent with Moehler’s concern that unwillingness to participate in second-level bargaining by disgruntled community members could lead to a breakdown in the social contract, say, by violent revolution. Neither does Buchanan provide a *Foole*-proof remedy for this problem except to note, like Moehler, that the development of the social contract is bound by the welfare outcomes expected among

members given a return to moral anarchy. In order to avoid moral anarchy, both participants to a conflict must expect that they can be made better off by peaceful negotiation than by initiating or continuing a pattern of violence. So long as both parties are committed to engaging in mutually beneficial interaction, Moehler's weak principle of universalization holds. Barring mutual acceptance of the weak principle, the stronger party might maintain the moral order by attempting to mitigate the destruction of non-cooperators, perhaps by promoting an institutional transformation that also transforms behavior of the defecting parties. The moral order is maintained.

Case (3) includes the interaction of a community member with an individual who is not a member of any community (extra-communal interaction). Once either a single community identifies the fundamental principles that guide the development of its social contract, or diverse communities develop a shared moral order that enables members of these communities to interact with one another, it is possible for individuals to escape moral anarchy without belonging to a moral community. These agents, who are not members of any community, freeride on the moral order developed by existing moral communities.

### MORAL COMMUNITY WITHOUT MORAL ORDER

We can imagine a case where a moral community exists around a social contract that has fully mitigated violence for cases handled by the social contract but not necessarily for those outside it. Suppose that feuding individuals resort to violence when agreement cannot be reached via the social contract. In this case, there exists no moral order. The world outside of the bounds of the social contract exists in moral anarchy. We might call such a community a *predatory community*.<sup>6</sup> Such a community has not developed a belief that human life, let alone human liberty, ought not to be aggressed against without just cause. That is, community members in their conflicts among one another violate the weak principle of universalization. Parts of the domain of this community reaches into the depths of moral anarchy.

Since such a community defies our modern sensibilities, it is useful to include an example. Peter T. Leeson (2014) describes such a community

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<sup>6</sup> One might prefer the less affective 'amoral community', however the author interprets this term as deceptively neutral. Such a community is not amoral in the objective sense since, as Buchanan describes, it involves "the ways that persons act and feel toward one another" ([1981] 2001a, 187). Neither is the community 'amoral' in the normative sense, if we mean 'amoral' to have a meaning distinct from and more favorable than 'immoral'.

in the example of the Indian Khond society. Leeson argues that the system of ritualized human sacrifice that existed in this society served as a means to wealth destruction, and that this system prevented intercommunity conflict by limiting incentives for intercommunal plundering. British Major Samuel Macpherson observed that while the system performed well in providing “order and security” within each community, “beyond all [communities] is discord and confusion” (Macpherson 1865, 81; cited in Leeson 2014, 149-150). This should be no surprise since, conceptually, moral anarchy forms the boundaries of such a community. The subject of Khondian human sacrifice by a given tribe was usually not a member of the tribe, but there was no restriction upon sacrificing even a member of one’s own tribe.

Leeson gives the Khond society as an example where rational choice theory explains why a society might fail to escape from a suboptimal equilibrium. The system had lasted, Leeson argues, because “it was also socially productive” in that “the wealth lost in violent clashes without human sacrifice exceeds that which is destroyed via human sacrifice” (2004, 162-163). In this presentation, accumulation of wealth is an attractor for conflict from other tribes. While it might have been possible for one tribe to dominate the others under different circumstances, the system of human sacrifice led to the exportation of wealth. The sacrificial subject, a *meriah*, was purchased for the purpose of human sacrifice. Most often, these individuals were not from a tribe in the Khond society. Thus, the system led to an outflow of wealth that limited incentives for, and therefore the level of, intertribal plundering.

This incentive compatibility is necessary to explain the functioning of the Khond society, but it is not sufficient for this purpose. The system of human sacrifice was deeply embedded in the social contract in the form of religious beliefs and practices:

Konds believed their fate rested in the hands of *Tari Penu* — the malevolent earth goddess to whom they offered *meriahs*. To ‘obtain abundant crops, to avert calamity, and to insure prosperity in every way’ they required her favor. *Tari* craved the blood of sacrificial human victims and ‘caused all kinds of afflictions and death if she was not satisfied,’ most notably ‘through war and natural calamities’. (Leeson 2014, 158)

Participation in cultural and religious practices within Khond society reinforced the social contract that “underlay a close identity between the ecclesiastical and temporal interests of the tribesmen” (Gangte 2017,

116). Priests participated directly while other members of the Khond society contributed to the purchase of the *meriah*. Once the sacrifice was complete “the crowd would rush to the victim and stripped the flesh from his bones” with the intention of mixing the flesh of the sacrificed with the soil where the tribe planted (Gangte 2017, 117).

While rational choice theory helps us to explain why heinous equilibria might emerge, additional tools are required to understand how such a system fits within the general structure of a social contract. A theory of *morals by agreement* should be capable of explaining the liberal organization described by Moehler, as much as it should be capable of situating the system of Khond society, even if such a society represents a failure in moral development. The social contract commonly allowed for each party’s access to force to adjudicate intertribal conflict. Moehler’s normative approach prevents such an application since a society organized around a system of human sacrifice considered “the eradication of human beings or certain members of society to be the overarching goal” (Moehler 2020, 60).

Considering his purpose, Moehler is correct. However, the framework elaborated here can still bring into clearer view the structure of such a society and how a moral community might evolve out of such a local equilibrium. Moral order is indicative of the lower bound of treatment between interacting moral communities, with the null set being moral anarchy. The lower bound for treatment of those falling outside the protection of the social contract took the form of sacrifice of innocent non-members. Although “[i]n practice they were nearly always non-Konds” (Leeson 2014, 151), by definition, the standard of treatment of non-members also indicated the lower bound of treatment for members. The same second-level contract governing treatment of non-members also mediates conflict not resolved by the first-level contract. Buchanan defines moral anarchy as a setting where “each person treats other persons exclusively as means to further his own ends or objectives” ([1981] 2001a, 190). The systematic sacrifice of humans and, potentially, even community members for maintenance of the social order falls within this definition.

The elements of moral anarchy present in each tribe’s social contract introduced a moral chasm between the communities in Khond society, and an insecurity that could potentially threaten the members of a tribe since, as Leeson notes, “[i]n principle *meriahs* could be persons of any age, sex, race, or caste” (2014, 151). The sacrifices came from outside the society, Leeson argues, because the stability provided by this system

occurred as a result of wealth destruction that disincentivized war. The system didn't extinguish moral anarchy; it simply mitigated its detrimental effects by means of wealth destruction while still allowing for behavior consistent with moral anarchy under particular circumstances.

Khond society was only able to exit the equilibrium when something analogous to the weak principle of universalization was provided by importation of the British legal system. In this case, the weak principle of universalization that alleviated intertribal conflict was not derived from or developed within an existing social contract. Macpherson coordinated a new arrangement between several tribes where British authorities offered to administer justice. He had observed that the Khonds “most anxiously desire of us justice — not betwixt man and man, which their own institutions can afford, but betwixt tribes and their divisions” (Macpherson 1865, 178; cited in Leeson 2014, 161). He offered a substitute for the system of human sacrifice. Intertribal conflict no longer needed to be governed by a system of vying alliances threatening and engaging in war. Instead, the tribes by mutually submitting to British legal rule could abandon both war and the system of human sacrifice that indicated an absence of moral order among and between tribal communities.<sup>7</sup>

We observe how emulating principles and experimenting with their application can improve the functioning of societies. While the development of moral order could have been applied to just a single tribe, the ability of that order to govern interaction between communities required that at least two tribes agree to change their manner of interaction with one another (Vanberg and Buchanan 1988, 152). A society's exit from the system dependent upon human sacrifice required that another means be substituted for maintaining order between tribes. Macpherson offered British legal administration for a small number of tribes willing to exit the system. Participants in this experiment received protection from intercommunal aggression and were therefore able to opt out of the wealth destruction entailed in the system of human sacrifice.

The only means of maintaining moral diversity in the face of a *community* that systematically implements and approves of aggression against innocent members is for a competing system of morals to be capable of withstanding the exercise of force from that community. Otherwise, moral diversity may be extinguished by parties with access to violence. Macpherson was able to offer this option to interested tribes

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<sup>7</sup> These Khond tribes preferred to import the British legal system instead of relying on the status quo system that depended upon human sacrifice.

because he drew his power from outside the Khond society. The potential span of association and cooperation improved as a result. Once several communities succeeded in improving their relations by this means, “soon other communities ‘spontaneously proffered to relinquish the sacrifice, mainly on the condition of obtaining protection and justice, and actually pledged themselves accordingly’” (C. R. 1848, 275; cited in Leeson 2014, 161-162). Bargaining at the second level of the social contract was initially facilitated by Macpherson, and was quickly internalized throughout Khond society, transforming their moral communities in the process.

### MULTILEVEL AND POLYCENTRIC ORDERS

The example of the transformation of the Khond society also illustrates how the multilevel and polycentric frameworks inform one another. British actors and legal elements successfully interacted with the Khond society in a manner that led to its transformation. That is, British institutions outcompeted existing endogenously formed institutions (Boettke, Coyne, and Leeson 2008). The presence of alternatives allowed for Khond tribes to adopt an alternate system for adjudicating conflict, especially intertribal conflict. The resultant moral order allowed individuals to engage one another with the expectation that plundering was no longer an option.

Moehler notes that inconsistency is bound to be present within a polycentric order and finds this problematic if there is to exist a coherent, well-functioning multilevel social contract:

As a result of such abstraction, the agents may not understand the relevance and normative force of the principles justified, as is often suggested with regard to Kant’s categorical imperative, which leads to a problem of (in)stability. Second, if the inhabitants of society are held constant, then moral rules can be justified that are valid only for certain subgroups of society, which leads to a polycentric moral order with restricted although potentially partially overlapping jurisdictions. Conceptually, *such a polycentric moral order cannot ensure stability of cooperation because, in the worst case, moral interactions may arise for which no moral rules are justified for all parties to a conflict, in particular if the parties belong to different subgroups of society.* (Moehler 2020, 45; emphasis mine)

Macpherson’s discomfort with the Khonds and his attempts to curtail the system of human sacrifice indicate the incompatibility of British institutions with Khondian predatory communities. Moehler hints at a way of

resolving this tension as “conceptually it [the polycentric order] is merely an intermediate step for defining a moral system that can ensure stability of cooperation in deeply morally diverse societies” (2020, 45–46). It is by no means an insignificant step in analysis to provide a path to agreement. This is part of my intention in developing Buchanan’s framework. A polycentric system provides a more reliable basis for allowing communities to develop and adopt criteria that promote a moral order and, thus, a multilevel social contract. The growing overlap between the Khond society and British practices led to a transformation of moral communities in the Khond society away from its status quo by integration of an Anglo moral order. The piecemeal development of a liberal order by the Khonds would have been highly unlikely given their starting point. Predatory communities have no obvious incentive to maintain moral diversity in the case of conflict with morally diverse agents. Key to the transformation, a small number of tribes, with protection from the British, succeeded in *exiting* the system of human sacrifice (Kukathas 2003), serving as exemplar for other tribes that wished to emulate their integration of British legal institutions.<sup>8</sup>

This sort of integration highlights the manner in which members of a society might adopt a system of rules that, implicitly or explicitly, coheres with Moehler’s weak principle of universalization. Without identifying a process that tends to lead the development of the social contract in the direction of the weak principle, such an analysis is subject to uncertainty that could unnecessarily limit its usefulness. Van Schoelandt (2019) notes that the existence of overlapping jurisdictions in a polycentric order could facilitate the adoption of second-level morality when first-level morality fails, and vice versa.<sup>9</sup> Noting this, Moehler reflects that his theory applies to agents “who have, all things considered, an overarching interest in securing peaceful long-term cooperation” (2018, 18). This outcome seems, to this author, akin to an equilibrium state. Allowing polycentric order to inform the development of the social contract illustrates how such a state might be reached.

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<sup>8</sup> Dekker (2016) and Dekker and Kuchař (2016) refer to tradeable exemplary goods. One might, in line with their following of Hannah Arendt, think of either (1) the British legal system as an exemplary institution, or (2) the tribes that successfully integrate the system as exemplary communities for other Khond tribes. Similarly, instead of subjecting civil relations to Sharia law, Qatar maintained separate civil courts modelled after the ‘Romano-Germanic’ system upon the exit of the British in 1971 (Hamzeh 1994).

<sup>9</sup> On polycentricity and political organization, see also Polanyi ([1951] 1998), Ostrom ([1991] 2014), Aligica (2014), and Aligica and Tarko (2012).

Finding what these agreements should be and how they can be structured to be inclusive may not be a straightforward process. By noting the possibility of overlapping social contracts associated with a polycentric order—that is, a morally diverse social order—a multilevel theory of social contract allows for a process of experimentation and emulation in regard to rules and rule structures. A polycentric order increases the number of combinations that might be tested by a community and adopted in the social contract. Presuming that Moehler’s instrumentally moral agents are looking for cost minimizing means of resolving conflict, these agents will search through this combinatorial space in order to find or generate rule structures that can facilitate resolution. As we observed with the development of the Khond society, the existence of or potential for overlapping social contracts can enable a society to exit a suboptimal equilibrium where conflicts cannot be solved according to the weak principle of universalization. It also provides reason to temper Buchanan’s pessimistic concern, in reflecting upon social conditions in the United States, that the moral order might unravel (Buchanan [1981] 2001a, 196–198).

The multilevel framework, with explicit inclusion of polycentric order, allows for an explanation of how certain institutions might spread across diverse societies and, in the process, constructively interact with social contracts of diverse communities. One might use the framework to analyze, for example, different episodes in European history, including: the spread of Roman law in diverse social orders under the Roman Principate; the role of Catholic institutions in maintaining the remnants of that law for communities across Western Europe during the Dark Ages; and the significance of European legal fragmentation in facilitating the Protestant Reformation or the liberty required for post-Enlightenment intellectual developments. Although Moehler’s intention was to provide a theory that explains how a morally pluralistic society with “agents [who] may hold irreconcilable moral ideals” (2018, 1) can function, a more general interpretation of the multilevel framework, otherwise compatible with Moehler’s framework, sheds light on the source of social dysfunction and the path to ameliorating that dysfunction without presuming a sole Hobbesian sovereign.

## CONCLUSION

While it is not correct to claim that every moral community must develop out of moral anarchy, the moral community solves the problem of moral

anarchy and some moral community must solve this problem *before* a moral order develops.<sup>10</sup> Here Buchanan diverges from Moehler as Moehler's intention is not to provide an evolutionary account of the formation of social contract. Still, Moehler recognizes alternative cases that do not fall within the purview of his own analysis.

In *Limits*, Buchanan presents the hardest case. Outside of moral communities, in a world absent moral order, agreements depend purely upon the incentive structure present in moral anarchy. The rationality of the initial set of agreements is eventually embedded in the artifacts of rules and beliefs of the moral community that emerge from it.<sup>11</sup> Absent the morality of the community, what predominates is a moral anarchy whose outcomes are guided directly by access to violence and which is comprised of instrumentally rational agents lacking a common moral frame distinct from the null set. Absent a shared moral order, moral communities that are entirely distinct in terms of overlapping membership must follow a similar course of development described in the initial formation of a community from moral anarchy. Lacking a shared moral order that attributes worth even to non-members, a community may not qualify for the descriptor 'moral', at least not in the strict sense. Interaction between communities that lack a shared moral order occurs in a sea of moral anarchy where conflict may swiftly descend into violence.

The moral community eliminates moral anarchy within the confines of the community. When a minimal set of shared norms neither exists, nor is developed between communities, the moral order collapses into a moral anarchy (Munger 2020) that will be present in any conflict not resolved by the first-level contract. Such disagreements are resolved by might, as this is the nature of human relations in moral anarchy. Moral anarchy predominates if the moral order deteriorates, or never existed, between communities lacking tight overlap. Moral anarchy may even be a feature in certain corners of a moral community's social contract, as exemplified by predatory communities.

A refined moral order allows the intercommunal interaction to progress beyond moral anarchy. A moral order might be developed by an intensive process of introspection—for example, by consideration of

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<sup>10</sup> The Mengerian tradition takes a similar approach in describing the emergence of institutions. In this light, the development of moral community and moral order is informed by Menger's causal-genetic description of the evolution of money (Menger [1871] 2007, [1883] 1985).

<sup>11</sup> Similarly, Vincent Ostrom (2006) refers to artifacts of governance that are generated in the process of participation in institutions of governance.

fundamental moral or legal principles—by importation and emulation, as in the case of the Khonds. By the moral order, conflict between neighboring communities is mediated by a shared rule structure, for example, the tolerance exemplified by the liberal moral order (Mises [1949] 1996, 146, 148, 152). The moral order can serve as the basis for the resolution of intracommunal conflict where the first-level contract fails at this task, or may resolve conflict between individuals from communities with differing first-level contracts *if* they at least participate in the same moral order. As with the modern liberal order, this enables individuals to live, if they so wish, outside or on the margins of any particular moral community, freeriding in some sense on the moral infrastructures of existing communities.

In all, I have presented insights from Moehler’s multilevel theory of the social contract by using his work and the framework presented by Buchanan to mutually inform one another. Concerned about incentive compatibility, Moehler constrains his analysis to his agent *homo prudens*, and therefore includes, for specific empirical conditions, the binding constraint of a basic income guarantee that enables behavior typified by *homo prudens*. Although consistent with the structure of Moehler’s framework, my development of Buchanan’s social contract theory is concerned with a different dimension of this problem. The multilevel social contract theory developed here is a strictly positive theory of coordination of diverse actors subject to a multilevel social contract. This theory does not preclude failure through anything analogous to the weak principle of universalization. It seeks to describe how cooperation within and between communities can exist in spite of the real and ever-present threat of a return to moral anarchy.

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