

Modeling constitutional choice: reflections on *The Calculus of Consent* 50 years on

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1 Introduction

I first came across *The Calculus of Consent* as an undergraduate student in Denmark in the 1980s, and while it may sound like a worn-out cliché it is certainly true that few books have had as great an impact on my thinking as a political scientist. At the time, there were few opportunities for a Danish political science student to get acquainted with public choice analysis. Several libraries carried the journal *Public Choice*, or had copies of books by James Buchanan, Gordon Tullock, Anthony Downs, Mancur Olson, William Riker, William Niskanen et al., yet the chance of finding groups of students or scholars interested in such perspectives was small, and getting any in-depth instruction through a course even smaller.¹ But as a first-year undergraduate in 1986, I accidentally came across Tullock's monograph, *The Vote Motive* (Tullock 1976),² given to me—almost as a kind of *samizdat* literature—by some politically incorrect friends, and this little book gave me my first introduction to public choice theory. However, it was not until the following year, when I attended an Institute for Humane Studies summer seminar at George Mason University, that I had the occasion to pick up a copy of *The Calculus of Consent*, which now celebrates its 50th anniversary.³

While this seminal classic was to have an enormous influence on my research, I should also be honest and admit that it was not full-blown love at first sight: Initially, I found the volume dry reading and sometimes not sufficiently explicit—especially with regard to what

¹At this time the number of Danish academics actively and explicitly pursuing research within the public choice paradigm broadly conceived could probably be counted on the fingers of one hand (cf. Nannestad 1993).

²Later the same year I had the first of many personal encounters with Tullock, who ever since has been a particular strong influence on my research (cf. Kurrild-Klitgaard 2000a). Twenty years later I was honored when asked to edit the 30th anniversary edition of *The Vote Motive* (Tullock et al. 1976/2006).

³I have touched upon some such reminiscences elsewhere (e.g., Kurrild-Klitgaard 2006a, 2010b).

was meant, respectively, to be positive and normative analyses. But as I have repeatedly re-read the book over the next 25 years, I have every single time discovered many “new” inspiring insights, first overlooked or underappreciated by me, while there are also parts that I still find less than convincing. In the following I shall briefly summarize these points and simultaneously point towards how they relate to my own research.

2 The path-breaking points

The most important lessons of *The Calculus of Consent* are, in my opinion, these three:

(1) *The demand for “symmetry” in modeling human actors* (Buchanan and Tullock 1962/2004: 11–17, 26–29). As Brennan and Buchanan (1985: 48–50) later phrased it:

On the basis of elementary methodological principle it would seem that the *same* model of human 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. [...] To] insist that the basic behavioral model remains invariant over institutions is to do no more than apply the *ceteris paribus* device in focusing on the question at issue. 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. If political agents do not exercise discretionary power in a manner analogous to market agents, then this result must follow because the rules of the political game constrain the exercise of power in ways the rules of the market do not, which is to say that the constraints are not comparable in the two settings.

Even now, 50 years on, and with rational choice theory and game theory having influenced political science so dramatically as to be mainstream (Goodin and Klingemann 1996), this methodological point still seems unappreciated in wide circles. Much of political science and economics—not to mention sociology—still treat human beings as having fundamentally different mindsets when they operate in the economic marketplace and in the political arena (e.g., March and Olsen 1989). In my own research, I accordingly have tried to show that even altruists, fanatics and ideologues would need to behave in instrumentally rational ways (Kurrild-Klitgaard 1997, 1998a, 2004c). I have been particularly interested in the connection between rationality and alternative ideal types (Kurrild-Klitgaard 1997, 2001b).

(2) *The economic analysis of decision rules*. This point is fundamental to the public choice way of thinking: If the costs of doing something increases, people do less of it, and the cost is lowered, people will do more of it. The function of constitutional rules is exactly to associate varying costs with acting in accordance or conflict with different rules (Buchanan and Tullock 1962/2004: 41ff, 60–111; Buchanan 2002: 14). Prior to *The Calculus* this simple, obvious point largely was unappreciated in political science (cf. Dahl 1956), but thanks to its impact, as well as the contributions of others working in the same tradition (e.g., Ronald Coase, Mancur Olson, William Riker, James Coleman), the point is now well-integrated into the social sciences (Goodin and Klingemann 1996; Lichbach and Zuckerman 1997; Bara and Pennington 2009). It was a great influence on some of my own early work, dealing with how the relative costs imposed by alternative succession rules in autocracies may influence the frequency of coups (Kurrild-Klitgaard 2000b, 2004a).

(3) *The economic consequences of constitutional rules*. The previous point has been used widely to analyze the origin of constitutional arrangements and their on-going operation.

If the costs and benefits of performing in accordance with particular rules influence how frequently those actions are undertaken, then we should also expect that alternative constitutional arrangements will lead to differences in patterns of policies (Buchanan and Tullock 1962/2004: 163f, 192–236, 238ff, 269–280). This has led to an astounding amount of research in public choice and constitutional economics (cf. Voigt 1997, 2011), and this insight has also been very influential in more mainstream research (cf., e.g., Persson and Tabellini 2003). I have myself looked at such issues in terms of empirical analysis of, on the one hand, what constitutional arrangements might be most efficient in limiting taxes, public expenditures, political violence, etc., and, on the other hand, which tend to promote economic growth.⁴ While some patterns are discernable, many of them turn out to be less than robust, and it is probably safe to say that the jury is still out on a number of these issues.

3 The problematic

So, what is there that is not to like about *The Calculus*? What I personally find least satisfying about the Buchanan-Tullock program, as presented in *The Calculus*, are first and foremost these two connected elements:

1. The contractarian approach (Buchanan and Tullock 1962/2004: 91f, 238–241, 295).
2. The “politics-as-exchange” perspective (Buchanan and Tullock 1962/2004: 16–29, 130f, 151ff, 211f, 238ff, 257ff).

I may appear heretical to question these features, which are usually identified among the most original and important elements of *The Calculus of Consent*.

That may be so. But I have always had difficulty understanding what the “social contract” metaphor tells us that we could not reach without it. From a normative perspective, it seems that the essence of the argument is a rule-utilitarian (or “indirect utilitarian”) point, namely that some sets of rules tend to be better at producing mutually beneficial social cooperation than others. If so, then it is not clear that other types of reasoning would not lead to the same conclusion. After all, many philosophers have reached similar results regarding freedom, property, contract, and so on, without embracing a contractarian rhetoric—most notably thinkers such as David Hume, John Stuart Mill, Ludwig von Mises and, more recently, Richard Epstein.⁵ If, on the other hand, the answer is that the contractarian approach is not simply rule-utilitarian but a more narrow, consent-focused argument, then what does that tell us beyond would be learned simply by applying Paretian analysis? No matter whether the focus is normative or positive, the social contract metaphor seems neither necessary nor sufficient (cf. Schmidt 1990; Kurrild-Klitgaard 1998b).

Closely connected to this issue is that of modeling politics as exchange. The politics-as-exchange perspective obviously has had important insights for the analysis of, e.g., logrolling among legislators and surely also takes place in the making of constitutions. But for much of what goes on in politics, modeling the latter simply as exchange would seem rather oblivious to “the dark side of the force”: politics-as-coercion (Knight 1992;

⁴See, for example, Kurrild-Klitgaard and Berggren (2004), Kurrild-Klitgaard (2001c, 2003) and Justesen and Kurrild-Klitgaard (2008). See also Kurrild-Klitgaard et al. (2006), where the dependent variable is the frequency of transnational terrorist attacks.

⁵See, e.g., Epstein (1989, 1998); cf. Gray (1984), Barnett (1998) and Yeager (2001).

Hirshleifer 2001).⁶ For while exchange no doubt plays a major role in explaining what goes on in politics, Buchanan and Tullock have themselves shown how a calculus of coercion (e.g., Tullock 1974, 1987) or a calculus of the costs of entry and exit (e.g., Buchanan 1968) may play very important roles, too.

4 Unfinished business

I also think that important issues that emerge from *The Calculus* that still require more critical attention.

Pre-constitutional choice: There appears to be what might be called a “Lockean challenge” to the contractarian enterprise. John Locke, of course, differed from Thomas Hobbes in that he thought that a government might not always be preferable to a state-of-nature: If faced with a tyrant people might actually be better off in a state-of-nature. However, in the contractarian paradigm indirectly set forth in *The Calculus* and more explicitly so by Buchanan in *The Limits of Liberty* (Buchanan 1975/1999), the pre-contractarian decision already had been made: It is now a choice between what rules to choose “inside” civil society (at the constitutional level), or what policies to adopt in the post-constitutional phase.

Buchanan and Tullock and their collaborators have, of course, devoted extensive efforts to the economic analysis of “anarchy” (cf. Tullock 1972, 1974; Buchanan 1977/2001).⁷ However, this has almost always been modeled as a prisoners’ dilemma-like choice between cooperation “inside” civil society or non-cooperation “outside” of it in a state-of-nature (or something comparable). But it does not take much reflection to realize that if the choice is a more complex one between, say, cooperation and conflict inside the contractarian framework and “exit,” then it may not always be preferable to enter the constitutional phase (cf. Kurrild-Klitgaard 2002, 2010a).

Constitutional reform: If politics is a world of rent-seeking actors, and if political processes themselves constantly are prone to free-riding problems, and produce government failures, then how can constitutional improvements take place? Every attempt to improve institutions and reap collective benefits will itself be open to rent seeking, shirking, and so on. The prisoners’ dilemma of the state-of-nature continues, so to speak, into both the constitutional and post-constitutional phases. The corresponding but more fundamental question then becomes: How might one ever bind the hands of Leviathan? Buchanan has raised such issues on a number of occasions (e.g., Buchanan 1980), and so have others (e.g. Bates 1988; Weingast 1995), but firm answers still elude us, even if the questions have both fundamental theoretical consequences (Kurrild-Klitgaard 1998b, 2006b) as well ones of practical day-to-day relevance in constitutional reform (Kurrild-Klitgaard 2004b).

Democracy: A third issue relates to the democratic process of voting and of majority decisions that plays such an important role in *The Calculus*. From the beginning, Buchanan and Tullock were dismissive of much of social choice analysis, including Arrow’s Impossibility Theorem (Arrow 1951/1963; cf. Buchanan and Tullock 1962/2004: 31, 320–324). But the economic analysis of voting undertaken by Buchanan and Tullock presupposes that there are indeed (in some meaningful sense) “right” decisions to be taken, and that

⁶Certainly, states themselves are not only not created through social contracts but through conquest and coercion (Tullock 1974; cf. Kurrild-Klitgaard and Svendsen 2003). They also are not maintained by exchange (alone) but to a very high degree also by coercion and by the costs of exit (Kurrild-Klitgaard 2002, 2010a).

⁷For some more recent works on the economic analysis of states-of-nature, or “analytical anarchism,” see, e.g., Boettke (2005) and Powell and Stringham (2009).

the question is what rules may work best. Yet if preferences are multi-dimensional, then we know from social choice analysis (including from Tullock 1967) that “chaos” may exist (whether manifest or hidden) in the sense that there may not be any outcome that is not preferred less than at least one other alternative. What would the economic analysis of constitutions look like, say, given the Rikerian perspective (Riker 1982) that no democratic procedures exist that can guarantee the selection of majority preferred outcomes? Buchanan and Tullock clearly were conscious of the issue of unstable collective preferences at the time of writing (cf. Buchanan 1954; Tullock 1959/2004; Buchanan and Tullock 1962/2004: 315–320) and in later works (e.g., Campbell and Tullock 1965; Tullock 1981), yet the problems of chronically unstable collective preferences are never really incorporated into their constitutional analysis.⁸

Together, these issues point towards fields of potential research questions in constitutional economics that should be investigated—and certainly have occupied the present author. But no matter what the answers may be, it is undeniable that Buchanan and Tullock first raised those questions.

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⁸See Tullock’s postscript (Buchanan and Tullock 1962/2004: 310–331), which deals with Arrow’s social choice analysis but does not really address the indeterminacy of social choice. I have myself explored empirical issues of social choice, e.g. voting paradoxes (Kurrild-Klitgaard 1999a; Kurrild-Klitgaard 2001a; Kurrild-Klitgaard 2008) and the possibility of manipulation (Kurrild-Klitgaard 1999b).

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