Growing up with the *Calculus of Consent*

Roger D. Congleton
BB&T Professor of Economics
West Virginia University
Morgantown WV

1-5-16

I. A Few Autobiographical Remarks

It is fair to say that most of my academic life was influenced by the *Calculus of Consent*: *Logical Foundations of Constitutional Democracy*. I was an undergraduate at Virginia Polytechnic Institute just after the Center for Study for Public Choice was founded there. I joined that university's new graduate program in economics after a somewhat fortuitous contact with Charles Goetz, a founding member of the center and former Buchanan student. The graduate courses were largely taught by scholars hired after the Center was up and running. I wrote my dissertation under James Buchanan's guidance and a significant strand of the dissertation was influenced by a more or less casual conversation with Gordon Tullock while driving to a conference in Northern Virginia. In the late 1980s, after a decade of teaching at small private liberal arts, business, and engineering schools, I became a faculty member at the Center, shortly after it moved to George Mason University.

The *Calculus* was clearly very important to the careers of Buchanan and Tullock. Without that book, the names "Buchanan and Tullock" would not be closely linked in the minds of public choice or other scholars. Without the success of that book, it seems likely that neither of these fine scholars would have had a profound impact on economics and political science. This is not to say that they would not have been acknowledged as significant scholars without the *Calculus*, but it is to say that the success of that book lifted both men to a new level of prominence and placed them at the head of a two extremely fertile fields of research that grew rapidly for several decades. The new fields of inquiry came to be known as public choice and constitutional political economy.

1

Without the *Calculus*, it is quite possible that the Public Choice Society would not have been founded, nor the Blacksburg Center for Study of Public Choice. And it is doubtful that I would have been attracted to economics without the "Virginianization" of the program at Virginia Tech, which would not have happened without the Center established there. In this respect, my entire academic career can be said to be a consequence of that pioneering book, although a quite indirect one.

I. Institutions Matter

The main messages of their book seems to be that: (1) Institutions matter, that the rules of the game can have a large effect on the types of equilibria that are likely to emerge in society's games when those "games" are played among more or less rational participants. (2) Alternative political and legal institutions can be ranked using either the Pareto criteria or the average effect of those institutions on participants, given individual preferences and the limited information available to them. (3) Institutions should be appraised by looking at their effects relative to other alternatives, not relative to some hypothesized ideal constitution or outcome.

I should acknowledge that these points were not immediately obvious to me in my first reading of the *Calculus* during my busy graduate student days. Rather, that institutions matter was impressed upon me by Buchanan's seminar presentations, his public finance class, and his comments at seminars. That the benevolence of institutional designers or the complete evolutionary perfection of institutions could not be assumed was impressed upon me during various arguments with Tullock and in his graduate public choice course. That these conclusions were reached in the *Calculus*, or at least strongly implied, became evident in much later readings.

I took those ideas to heart when I left Blacksburg and they have long been at the core of my own research program in constitutional political economy. The first piece that I published after graduate school was a paper titled "Competitive Process, Competitive Waste, and Institutions" published in the first rent-seeking collection (1980) showed how institutional designs could affect the extent of both conflict and losses from conflict in

2

rent-seeking contests.. My most recent book, *Perfecting Parliament* (2011), and second most recent paper "Why Local Governments Do Not Maximize Profit (2011) show how and why representative institutions tend to be adopted by self-interested men and women--even if there are neither revolutions nor constitutional conventions.

The direct link between my work and their famous book is limited to my papers on bicameralism. However, most of my work takes their constitutional approach for granted and applies it to new problems and subjects: to rent seeking, to the emergence and role of norms, to political agency problems, to the effects of institutions on public policies, to the evolution and origin of constitutions. It is also fair to say that the direct effect of that book on Buchanan and Tullock's own work was also limited. They wrote relatively little about explicit constitutional designs after that book, yet much of their subsequent work focused on the effects of alternative institutions on political and economic behavior, and directly or indirectly stressed the importance of alternative rules of the game.

Their book had established a general approach to thinking about and analyzing constitutions that could be and were applied broadly to topics in political economy, political science, sociology, and philosophy. After the *Calculus*, that constitutions could be analyzed using rational choice models became "self evident" in both economics and in the subset of political science undertaken by rational choice theorists. Both the analytical contributions and success of the *Calculus* allowed subsequent scholars to take the merits of rational-choice based research on constitutions for granted.

II.   The Calculus and Perfecting Parliament

In my work, the constitutional approach is most evident in my most comprehensive effort, *Perfecting Parliament: Constitutional Reform, Liberalism, and the Rise of Western Democracy* (2011). That book attempts to address issues left unanalyzed in the Calculus, but does so in a manner that accepts the core results and approach developed in their book.

The *Calculus* largely takes for granted the institutions of American democracy. It analyzes the effects of alternative voting rules, many of which are applied in the US. It analyzed the effects of bicameralism in a form that is used almost nowhere else, in which both

chambers have equivalent veto power over new policies. It analyzes how decentralization in federal systems works. It argues that these institutions advance a variety of broad shared interests in public policy making by reducing external costs imposed on minorities by the policy choices adopted. Their analysis suggests that the institutions that we have are ones that might have been universally agreed to from behind a "veil of uncertainty." Such a conclusion is consistent with many of the founding myths of the United States. At the same time, their analysis suggests that particular voting rules and institutional arrangements should not be taken for granted.

Perfecting Parliament notes that few constitutions have ever been adopted whole cloth at a single constitutional convention as imagined at some points in the *Calculus*. There have been a few constitutional conventions in the Western hemisphere, but in most cases the constitutions adopted were not so different from the rules in place before the conventions were undertaken. Moreover, many significant constitutional reforms have been adopted throughout the west through amendment procedures and ordinary legislation, rather than at a convention--as with voting rules in the U.S. and most of Europe. Thus, although the Calculus provides both contractarian and utilitarian normative defenses of the institutions used in the US (agreement from behind a veil of uncertainty, maximizing the net benefits of collective choice), it does not really explain where those institutions came from.

Indeed, if the narrowly self-interested, game-theoretic, perspective used in most of the Calculus and the rest of the public choice literature is taken seriously, such institutions should be essentially impossible. As Tullock (1974) points out in other work, revolutions against well-functioning authoritarian regimes are essentially impossible, because of free-riding problems and suppression by those governments. Moreover, even if successful, post-revolutionary constitutional conventions require procedures for making constitutional choices, and hence a pre-convention to determine how constitutional choices should be made, which of course requires a pre-pre-convention to determine how such rules can be chosen. In those rare cases where these public goods, coordination, and social choice problems are overcome, the generals of victorious armies often prefer to run things after they succeed. Even battles fought under more or less democratic banners, normally lead to dic-

tatorship, as with Cromwell, Napoleon, Lenin, and Mao. A constitutional convention organized by such men is unlikely to produce democracy, because they would have veto power over what emerges and have interests that can be advanced by retaining a good deal of authority, as would most of their senior compatriots.

This logic seems to imply that the normal state will be "rent-extracting" enterprises rather than a liberal democracy, what North, Wallis, and Weingast (2009) call a "natural" state. Given this, how was it that liberal democracies with all of the useful features characterized by the *Calculus* actually emerged?

If the rational choice approach to constitutional design is taken seriously, existing institutions must reflect the interests of persons with sufficient authority to create and enforce constitutional rules. *Perfecting Parliament* shows that there are good reasons for even dictators to share authority with other persons (often organized as a council or parliament) if it is not possible (or too expensive) to reduce everyone else to docile slavery. There are often gains from trade in which one party receives authority that it did not have in exchange for services or other benefits obtained by the party (possibly the dictator) that initially had the authority. Such constitutional gains to trade are present in ordinary market transactions when an entrepreneur gives up some control over his or her company in order to obtain useful injections of capital that can be used to advance the founder's interests (increase the size, profits, and the survivability of that company). Similar agreements often took place among kings, their advisors, and relatively powerful persons in their kingdoms.

Simply taking what is wanted will undermine incentives to produce wealth, induce exit, galvanize resistance, and make governance less profitable. Overcoming such resistance is costly. As a consequence, negotiations over divisions and reassignments of authority are at least as evident in history as conquest.

In many cases, such negotiations have produced governments with a relatively weak parliament or council of state and a relatively strong chief executive (king or dictator). However, such constitutional arrangements are not entirely static or stationary. In the long run, as a variety of external shocks are experienced and a variety of persons hold high office,

new bargaining can shift additional authority from the king to the parliament and/or back to the king.

A narrowly self-interested model of constitutional bargaining and design can thus account for a broad range of implementations of the king and council template. It can explain instances of both royal and parliamentary rule, as well as intermediate divisions of authority, without the need for a binding, somewhat implausible, constitutional convention taking place. However, the shift from this domain of non-democratic institutions common in world history to the democratic ones analyzed in the *Calculus* requires another step or two. Namely, those in parliament have to agree to be selected via broad-based elections.

Elections for position of influence are ancient. Whenever those sitting on the council or in parliament represent the interests of a larger group, they have to be selected in some manner, and elections are often used for such purposes. But the narrow suffrage common in world history differs in several respects from a broad suffrage of liberal democracies. In most cases, the persons casting votes for representatives were members of well-organized interest groups (clergy, nobles, merchants), rather than "the people."

That broader suffrage would advantage any groups that obtain new votes or additional representation is clearly indicated by the models of the *Calculus*. The center of gravity in the electorate (median voter) shifts in their direction and any logrolling that takes place after an election is more likely to include their representatives in the legislative deals worked out. However, this also suggests that it not likely to be in the interests of those already represented to add new persons to the electorate or to the parliament. The "great unwashed" are not well organized and do not have much to offer in exchange for authority or voting rights that cannot be obtained in other ways (as through taxation or a military draft).

To motivate an expansion of suffrage, *Perfecting Parliament* suggests that a modest departure from the narrowly self-interested models is necessary. For example, ideology and ideological shifts can be added to the analysis. If a role for ideology in rational choice models is accepted, one can attempt to identify ideological shocks that can generate suffrage reform.

The emergence of liberal political and economic theory and its gradual penetration into elite political and economic circles in the nineteenth century provide a possible path to democracy. Given a liberal trend in ideology, constitutional and other reforms may exhibit a similar trend, a trend that is evident in Western history. Such a trend seems evident in the long series of reforms adopted in nineteenth-century Europe, North America, and Japan. Many privileges were reduced, markets and politics were opened to competition, and suffrage and other rights were more uniformly extended.

The new "liberal" consensus that emerged gradually produced the electoral institutions and balance of authority analyzed in the *Calculus* and in most subsequent work in Public Choice and Constitutional Political Economy. The *Calculus*, in turn, provides an explanation for the continuing support of those institutions by both liberals (in this constitutional sense) and pragmatists after they were in place. They advance the long run interests of those represented in them.

III. Conclusion: on the Value Added by the CPE Paradigms

The most important contribution of the *Calculus* was not a single result, rather it was the totality of their results, which demonstrated that (i) institutions matter and (ii) that how they matter can be analyzed using rational choice models. These insights, especially the latter, allowed a more systematic and rigorous analysis of constitutions than previous approaches had allowed, and the new paradigm that emerged re-energized the long-standing constitutional research program.

It also encouraged new ways of thinking about other choice settings. For example, it is interesting to note that the paradigms of scientific research programs have much in common with constitutions. Again there are two levels of analysis possible. A paradigm is taken for granted for day-to-day research, much as constitutional law tends to be, because its organizing principles and rules have been internalized by those "in the game." As a consequence, an internalized paradigm has subtle effects on science and the behavior of scientists that are apparent only when looking across paradigms.

Constitutional and paradigmatic stability both tend to make day-to-day decisionmaking and research far more productive by reducing conflict over fundamental issues. This allows attention to be focused on smaller problems where progress is far easier to make. Yet revision, at least at the margins, is often advantageous for each. And, the proper balance between permanence and adjustment in constitutions and paradigms is not easy or obvious, but requires a sophisticated appreciation and understanding of the role and effects of institutions in civilized society.

Moreover, the internalization of paradigms and constitutions makes it easy for "practical" men and women to believe that neither paradigms nor the rules of the game matter. After all, their day-to-day decisions appear to matter more. A field's paradigm does not the outcome of research any more than the rules of a boxing match determine the outcome. Rather it is the skill, training, and luck of the participants that determine the outcomes, given the rules. The rules determine the set of permissible and impermissible strategies. Not all strategies are permissible: a boxer may not bring a knife to the ring. Not all research questions or assumptions within a paradigm. For example, prior to the *Calculus*, constitutional analysis was considered to be outside the domain of economics. In the long run, both rules and paradigms are revised from time to time, because some rules and some paradigms work better than others.

Paradigms, like the rules of most games, are often revised through reinterpretation by officials (fellow scientists) and neglect (disinterest). In addition, most sciences, like most games, have rule setting bodies: the grant-making bodies of public and private foundations, and the editors of major journals. In this it could be said that most scientific fields have formal amendment procedures. Support or opposition by such bodies makes paradigm shifts more or less likely to occur.

From this short discussion of paradigms, it should be clear that the paradigm shift began by the *Calculus* extends far beyond the analysis of political constitutions. By reminding economists and other social scientists that much behavior occurs in frameworks characterized by slowly changing, internalized, rules, a broad variety of research questions and models arise.

Our understanding of constitutions and other institutionalized rules have clearly been much improved by the rational-choice based analysis initiated by the *Calculus*. And, the general approach and many of the conclusions of their fine book, like a well functioning constitution, have begun to stand the test of time. Most contemporary CPE research continues to use their basic approach, and continues to demonstrate that the "rules of the game" matter—and often do so in indirect and subtle ways, much as the *Calculus* affected my academic life.

REFERENCES

Buchanan, J. M. and G. Tullock (1962) *The Calculus of Consent: Logical Foundations of Constitutional Democracy.* Ann Arbor: University of Michigan Press.

Congleton, R. D. (1980). "Competitive Process, Competitive Waste, and Institutions," in J. M. Buchanan, R. D. Tollison, and Gordon Tullock (Eds.) *Toward a Theory of the Rent-Seeking Society,* College Park: Texas A&M Press.

Congleton, R. D. (2011) " Local Governments Do Not Maximize Profits: On the Value Added by the Representative Institutions of Town and City," *Public Choice* 149: 187-207.

Congleton, R. D. (2011). *Perfecting Parliament: Constitutional Reform, Liberalism, and the Rise of Western Democracy.* Cambridge: Cambridge University Press.

North, D. C., Wallis, J. J., and Weingast, B. R. (2009) *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History.* New York: Cambridge University Press.

Tullock, G. (1974) The *Social Dilemma, The Economics of War and Revolution.* Blacksburg, VA: University Publications.