

From *The Calculus of Consent* to *The Calculus of Dissent*: a personal promenade in the constitutional square

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*Ignoranti quem portum petat, nullus suus ventus est.*¹
Seneca the Younger, Moral Letters to Lucilius, Letter 71

1 Introduction and overview

New books are not necessarily those just published, but those that speak to ever new readers through time. *The Calculus of Consent*, along with a few other books in political economy, is such a “new” book because it still continues to speak.

There are at least two ways to celebrate a book. One is to see it as a forerunner of ideas leading to new theoretical perspectives. The other is to concentrate on some specific aspects contained in the book. I am inclined to travel along the latter path in order to show that *The Calculus of Consent* is valuable not only for its content, but because it explores the frontier between constitutional order and political organization. Specifically, my aim is to show that methodological individualism and the related contractarianism inborn in *The Calculus of Consent* can serve equally well beyond consent without running the risk of swinging back into anarchy.

I read *The Calculus of Consent* for the first time more than 20 years after its publication and the book left heavy impressions on me in subsequent years. What has doubtlessly stimulated me most to look into *The Calculus of Consent* deeply, though, was Buchanan and Tullock’s energizing presence during my visit to Virginia in the 1984–85 academic year. Since then, *The Calculus of Consent* has become and still is a cardinal point for me. My training in the Italian tradition of Public Finance predisposed me to connect immediately

¹No wind is favorable for those who do not know which port they are trying to reach.

with James Buchanan, who had catapulted that trend of thought to the Anglo-Saxon world through his path-breaking essay “La Scienza delle Finanze: The Italian Tradition in Fiscal Theory” (Buchanan 1960), which also deeply permeated my thinking. I recall vividly that the response to my many questions on core points of *The Calculus of Consent* led me to the idea of revitalizing De Viti de Marco’s fiscal theory, which had been supplanted by the dominant Keynesianism. The constitutional approach of *The Calculus of Consent*, which was almost entirely absent from the Italian tradition—with the notable exception of De Viti de Marco—supplied the corrective needed to shift the analysis of the Italian tradition in Public Finance from a historical, or even purely an archeological perspective, to a prospective analysis, one which is still capable of attracting attention (Eusepi and Wagner forthcoming).

My personal promenade in the constitutional square began with what I see as the only valid approach to contractarian constitutionalism: genuine methodological individualism. The problem of unanimous consent requires that constitutional analysis precedes political analysis, but most of all it requires that the decision-making process be based on real methodological individualism both at the constitutional level, where unanimity or quasi-unanimity applies, and at the political level, where majority rule applies. At the political-choice level, unanimous consent is simply unachievable due to decision-making costs and, hence, it is unable to settle intra-generational problems and, *a fortiori*, inter-generational ones, specifically those associated with public debt.

The Calculus of Consent offers a two-stage analysis and, in my view, foreshadows, at least implicitly, a third stage, which may be called the stage of constitutional renegotiation. It is this third stage—which deals with the separation of powers and which appertains not only to the horizontal dimension, but also to the vertical dimension—that sparked my *Calculus of Dissent* (Eusepi 2002).

In my reading, *The Calculus of Consent* offers a polycentric perspective of the state. Yet while everyone almost automatically reads *The Calculus of Consent* as though it were a book profoundly shaped by Hobbes’ *Leviathan*, one has to remember that Buchanan sought to distance himself from Hobbes in his separately written Appendix 1, “Marginal Notes on Reading Political Philosophy” (Buchanan and Tullock 1962: 307–322). Here lies, I think, the innovative power of *The Calculus of Consent*.

Methodological individualism, which serves theoretically as the basis of *The Calculus of Consent*, will find its epistemological frame in the distinction between choice-influencing cost and choice-influenced cost that is the most brilliant notion worked out in *Cost and Choice* (Buchanan 1969). What was already clear in *The Calculus of Consent* is that the individual who chooses in the constitutional square is the same individual who chooses in either the political square or the market square. This is what I define as genuine individualism: Diversity does not lie in the individual, but in the context in which the individual chooses. Again, also on this front, which is different from my dissent case, the stages are three, not two. But the question the three stages call for is the same: what do individuals choose when they face two alternatives?

At a constitutional stage, the problem is not whether to have a constitution or not; the problem is concerned with the kind of constitution. Certainly, if we think of choice as one between alternative constitutions that differ by margins, not by categories or totalities, we can hardly think of *The Calculus of Consent* as Hobbesian (see the discussion in Brennan and Eusepi 2000). For Hobbes there can be at the most *one* constitution, but that constitution is neither contractarian, nor democratic. Supportive of my thesis is the subtitle of *The Calculus of Consent*: “*Logical Foundations of Constitutional Democracy*”, which is a far cry from the Hobbesian analytical standpoint.

2 *The Calculus of Consent* in my research work

There can scarcely have been any one book on contractarianism and Political Economy *lato sensu* that has more profoundly shaped my work than *The Calculus of Consent*. Yet, though this book is often quoted in my works with my colleagues Geoffrey Brennan and Richard E. Wagner, the most substantial treatment which I gave to it is to be found in my *Calculus of Dissent*. Central to my analysis is the extension of the contractarian approach to a non-consensual ground, which we are unable to attain if we conceive of contract and consent as identical. It was precisely a consideration of this kind that drove me to complete the two-stage model, which separates the constitutional perspective from the political perspective, with the introduction of a third stage. Yet, though this third stage to some may appear spurious—and to a certain extent it is because it deals with results rather than processes—it nevertheless has a constitutional nature because of the way in which it emerges.

In my reading, methodological individualism and the contractual standpoint have an explicative heuristic spectrum that goes well beyond the consensual and the majoritarian logic without swinging back to Hobbes. Methodological individualism, in fact, could be said to be a tool able to explain why a majority may not be achieved. Yet, it does not follow from this that either contractarianism or democracy have failed. In case that neither consent nor majority on the supply of public goods is achieved, dictatorship seems to be the only plausible solution under the assumption that contract and consent are synonymous. Yet, one might be inclined to think that the specter of Hobbes is haunting once again. Not so, for so long as everyone votes for his preferences, each one is a dictator and, hence, in such a state of competing dictators it is hardly possible that a treacherous situation with one dictator would emerge. Hobbes' dictator surfaces only inasmuch as all others have given up their decision-making power.

The reason for this is obvious. When at this post-constitutional stage it is dissent instead of consent that emerges, the contract power is nuanced perhaps, but not entirely brushed off. As a result, in the dissent case, the potential competing dictators make up a sort of quasi-constitutional context driven by the logic of an equal-possibility. Against this background, I suggest that the most appropriate way to view *The Calculus of Consent* is as a posthumous revenge against Hobbes. Within a quasi-constitutional approach, the dissent recreates, although spurious, a quasi-Rawlsian ambience.

The drawing-lots procedure may appear alien to the decision taken behind the Rawlsian veil of ignorance—and in fact underlying the decision is a self-determined individual who is able to assess the alternative that is the best for him. Even so, the individual also knows that neither his own choice, nor that of anybody else will have any chance to prevail in the public-good market. In a sense, each decision maker can be seen as having too much information rather than too little. It is as if he were set beyond a Rawlsian veil. Yet, his choice stays within a marginal, not total dimension for it has the same weight as any other choice taken by others in the polity. Indeed, these choices are mutually exclusive since they are at the same time equally weighing and diverging. There is surely not much room left for dictatorship here! And, in fact, there is not any contradiction in the extension of the contractual logic, which is typically procedural, to the dissent case, where consent on rules is unattainable, but each individual commits himself to abide by the rule that will be drawn by lots.

There is no doubt that an agreement involving reciprocal commitment to accept the result of the alternative that comes out by drawing lots is at any rate a quasi-constitutional dimension, which is reminiscent of Rawls' veil of ignorance. The very fact that the result coming out from the box may undergo revision makes the alternative decided by lots a relatively absolute, as is true for all contractual procedural choices.

Prima facie, this result seems to violate Arrow's criterion that results should "not be imposed" because this would inevitably open up a crevasse in democracy. Establishing a criterion based on the equal probability for a result to be drawn does not mean that such result is imposed, for there was a priori consent to accept whatever result might emerge. It must be conceded that such result may give rise to problems (Eusepi 2002). Yet we must not conclude that those problems are associated with an alleged imposition. If the result were really imposed (but by whom?), choice would be democratically illegitimate *ipso facto* and incompatible with the logic of the contract that originated it.

The conclusion that I have reached under the spell of *The Calculus of Consent* may be best represented by Tullock's statement in Appendix 2, "Theoretical Forerunners" (Buchanan and Tullock 1962: 323–340), that "an imposed decision, in Arrow's terminology, may be the best available outcome."

3 *The Calculus of Consent* in my classrooms

When *The Calculus of Consent* was first published, economics and politics were drastically separated and so were private ethics and public ethics. So too were wealth production and wealth distribution. There was no room for Political Economy and the famous Smithian sentence: "What is prudence in the conduct of every private family, can scarce be folly in that of a great kingdom" (Smith 1776: Book IV, Chap. II), was utterly alien to that world. *The Calculus of Consent* has brought back Smith's analysis and Political Economy onto the scene. To convey the fundamental ideas there contained in my classes has been and is my main goal.

Two chapters of *The Calculus of Consent* have widely and profoundly influenced my teaching: Chaps. 6 and 13. A simplified rendition of Chap. 6, commonly known among my undergraduate students as the decision-making model of Buchanan and Tullock, is presented to provide a true reflection on the role of the super-rule as limiting the otherwise discriminatory power of majoritarian democracies. Moreover, the chapter is used to separate constitutional political economy as the science of efficiency from politics as the science of equity. The latter distinction has come to be known as the "two-hats hypothesis", which has proven to be of immense interest to my students.

Much more complex has been the comparative analysis of the two chapters in my graduate courses. Such a combination has served theoretically as the basis of the notion lumped under the label "fiscal traceability", which presupposes the constitutional logic and the connected Paretian equilibrium of budget balance. This notion is of critical importance in the analysis of fiscal illusion. In these conditions, and only in these, fiscal illusion is virtually eliminated. It is evident that 1€ cannot be spent at once for public goods and for transfers.

The analysis in Chap. 13, which deals with the possibility of transfers through politics, provides a framework for understanding how an *ex ante* constitutional decision can secure a balanced budget. One of the aspects that allow *The Calculus of Consent* to step forward is that it rejects all notions of interventionist democracies based on the "two-hats hypothesis." This explains why I do not hesitate to consider *The Calculus of Consent* as the constitutional foundation of a liberal democracy.

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