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# The Calculus of Consent Revisited

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## Abstract

*Buchanan and Tullock have a reputation as radical defenders of private property, markets, free enterprise, limited government and libertarianism. While this account is to some degree correct, the present paper shall argue that it is exaggerated. It will show that their supposed adherence to these doctrines and philosophies is at best a moderate, not a radical, one, because of numerous errors with respect to their theories of democracy, ruling class, constitutionalism, contract, voting, methodological individualism, and the relation between government and private enterprise*

## Introduction

Buchanan and Tullock (1962, hence BT) have a reputation as radical defenders of private property, markets, free enterprise, limited government and libertarianism. While this account is to some degree correct (1), the present paper shall argue that it is exaggerated. It will show that their supposed adherence to these doctrines and philosophies is at best a moderate, not a radical, one, because of numerous errors with respect to their theories of democracy, ruling class, constitutionalism, contract, voting, methodological individualism, and the relation between government and private enterprise.

## Linguistics

Let us consider BT's (2) unfortunate misuse of language. The most basic distinction in all of political economy is surely the one between actions that are coerced upon unwilling victims, and those that are undertaken on a voluntary basis. The latter BT categorize as "private,"

reasonably enough. But the former they characterize as "collective," surely a misnomer. For the word "collective" implies that a group of people join together, on a voluntary basis, and do something en masse. Clearly, a better choice of words to highlight this differentiation would have been "private" for voluntary contracts between two consenting parties, and "coercive" for those arrangement where some people act under the duress imposed by others.

As for "collective," this, too, is a legitimate word in the English language, and must therefore have some use or other. The most meaningful referent would be to the actions of three or more people that cannot be analyzed into several two-way pairings; e.g., a golf party or dinner and a movie arrangements. The distinction between collective and private would refer merely to the number of people involved in a decision. This is not a world shaking difference; rather it is one barely worth making. In any case, the two distinctions yield a two by two matrix:

	Private	Collective
Voluntary	A	B
Coercive	C	D

Here, A stands for private voluntary actions, such as the purchase of a newspaper for \$.50. There are only two participants, hence the private characterization, and since there is no force or the threat of force, it is categorized as voluntary. B is also voluntary, but here there are three or more participants who are not based on numerous pair wise agreements. An example would be where a large group of people starts up a golf club, or decide where to go for dinner and a movie. The case of the ordinary firm would be an example of A; even though there are large numbers of people involved, each of them, the employees, has a contract with only one person, the owner of the business.

In C, the interaction is coercive and private. An example would be Crusoe enslaving Friday, or one holdup man robbing a single victim. D is equally coercive, but here there are three or more people who participate. Examples include tyranny of the majority, where a larger group forces its will on a smaller group.

The important comparison is between the two rows. Whether an act takes place on a voluntary basis, or where one party, no matter its size, physically threatens another, no matter its size, is a matter of supreme importance. In contrast, the separation between the two columns, however important for some purposes, is of far less account, at least philosophically speaking. Whether force is threatened is crucial; how many people are involved, is not.

According to BT,

"Collective action is viewed as the action of individuals when they choose to accomplish purposes collectively rather than individually, and the government is seen as nothing more than the set of processes, the machine, which allows such collective action to take place" (p. 13).

But this is disingenuous. It glosses over the vital distinctions made above between force and agreement. Collective action, when accomplished through the intermediation of the state, is no longer merely collective. Due to the police power of the government, it becomes turned into coercive collective action.

States Hoppe (1993, pp. 18, 19):

"What has commonly been overlooked, though, -- especially by those who try to make a virtue of the fact that a democracy gives equal voting power to everyone, whereas consumer sovereignty allows for unequal 'votes' -- is the most important deficiency of all: Under a system of consumer sovereignty people might cast unequal votes but, in any case, they exercise control exclusively over things that they acquired through original appropriation or contract and hence are forced to act morally. Under a democracy of production everyone is assumed to have something to say regarding things one did not so acquire, and hence one is permanently invited thereby not only to create legal instability with all its negative effects on the process of capital formation, but, moreover, to act immorally."

## Democracy

BT ask, "How shall the dividing line between collective action and private action be drawn?" (p. 5). This would seem to indicate either that they do not take cognizance of the more complex two by two matrix discussed above, or that their concern is with what we have called the unimportant issue.

The proof of this is their continual interpretation of collective decision making in terms of political or democratic elections. The point is, this belongs in the coercive, not the voluntary sector. Why? How can it be claimed that democratic voting is coercive? The obvious answer is that the minority is compelled to accept the wishes of the majority.

But the other side of this debate is not without its reply. It claims that all participants in the democratic process have *agreed* to be bound by its decision. (3) Therefore, there is no coercion involved. Indeed, there cannot be. It is just as if a person purchased a newspaper for \$.50, and then, after being given the paper, refused to pay the agreed upon amount of money. To force him to disgorge the coins would *not* violate his rights. On the contrary, to allow him to keep these funds would be a theft from the vendor. In like manner, if a person agrees to be bound by majority vote, and then balks when he loses the election, to compel him to honor his agreement is not to violate his rights. On the contrary, to allow him to do so would be coercive to the majority.

Now let us consider the critique. On the one hand, Spooner (1966) is definitive in his claim that, as a matter of *fact*, the minority did not agree to be bound by majority decision making. All evidence seeming to the contrary (willingness to vote, to pay taxes, etc.) can be interpreted not as agreement, but as a defensive measure attempting to make the best of a bad (coercive) situation.

Second is Schumpeter (1942), who remarks on the type of democratic views espoused by BT as follows:

"The theory which construes taxes on the analogy of club dues or the purchase of the service, of, say, a doctor only proves how far removed this part of the social sciences is from scientific habits of mind" (p. 198).

In the view of Hoppe (1993, p. 13):

"The most prominent modern champions of Orwellian double talk are J. Buchanan and G. Tullock. They claim that government is founded by a 'constitutional contract' in which everyone 'conceptually agrees' to submit to the coercive powers of government with the understanding that everyone else is subject to it too. Hence government is only *seemingly* coercive but *really* voluntary. There are several evident objections to this curious argument. First, there is no empirical evidence whatsoever for the contention that any constitution has ever been voluntarily accepted by everyone concerned. Worse, the very idea of all people voluntarily coercing themselves is simply inconceivable, much in the same way as it is inconceivable to deny the law of contradiction. For if the voluntarily accepted coercion is voluntary, then it would have to be possible to revoke one's subjection to the constitution, and the state would be no more than a voluntarily joined club. If, however, one does not have the 'right to ignore the state' - and that one does not have this right is, of course, the characteristic mark of a state as compared to a club -- then it would be logically inadmissible to claim that one's acceptance of state coercion is voluntary. Furthermore, even if all this were possible, the constitutional contract could still not claim to bind anyone except the original signers of the constitution.

"How can Buchanan and Tullock come up with such absurd ideas? By a semantic trick. What was 'inconceivable' and 'no agreement' in pre-Orwellian talk is for them 'conceptually possible' and a 'conceptual agreement.' For a most instructive short exercise in this sort of reasoning in leaps and bounds, see Buchanan (1977). Here we learn (p. 17) that even the acceptance of the 55 mph speed limit is possibly voluntary (Buchanan is not quite sure) since it ultimately rests on all of us conceptually agreeing on the constitution, and that Buchanan is not really a statist, but in truth an anarchist (p. 11.)"

It is even possible to go further in this criticism (McGee, 1992). For suppose that BT were correct and Spooner, Schumpeter and Hoppe are mistaken concerning their views of the original contract. That is, people *did*

at one time unanimously get together and sign a constitution, obligating all of them to be bound, thereafter, by majority rule (or what ever other voting requirements were stipulated); and that this was not done, defensively, as it were under duress, a la Spooner. It still does not follow that this "contract" is binding upon anyone, even the signatories, let alone their descendants. In order for this constitution to pass muster, it would have to overcome one further hurdle, that set by Rothbard (1973, 1982) for contracts. In his view, *consideration* is absolutely imperative if an erstwhile "agreement" is to qualify for the honorific of "contract." Without at least some sort of consideration passing hands from one party to another, what we have is merely a "promise," not a contract. (4) And, while it would be moral for a man who promises a woman he will marry her to carry through on his promise, this is not legally binding. Nor would the establishment of a government be legally binding, based on mere promises, even if it were at one time unanimous.

### Ruling Class

State BT in this regard:

"We shall also reject any theory or conception of the collectivity which embodies the exploitation of a ruled by a ruling class. This includes the Marxist vision, which incorporates the polity as one means through which the economically dominant group imposes its will on the downtrodden. Other theories of class domination are equally foreign to our purposes. Any conception of State activity that divides the social group into the ruling class and the oppressed class, and that regards the political process as simply a means through which this class dominance is established and then preserved, must be rejected as irrelevant for the discussion which follows" (p. 12).

Now this is more than just passing curious. Had BT given *reasons* for their rejection of class analysis, commentators could have agreed or disagreed with them, and, in so doing, made a rational choice as to whether to support this theory or not. But nowhere in BT are such considerations to be found. Instead, they content themselves with the mere announcement that they have ruled such theories out of court. Is this due to a "revelation" (see BT, p. 4) of some sort, not vouchsafed to the rest of us?

Just because BT will not consider this sort of analytic framework is no reason for us to refrain from it. On the contrary, we do well in this context to consider the class analysis of John J. Calhoun, no Marxist, he, who bases his analytic framework on the tax-subsidy system. In his view, society can be divided into those who, on net balance, pay more to the state than they receive from it, and those who pay less to the state than they receive from it. The former are net tax payers, or the exploited; the latter are net tax receivers, or the exploiters (Lence, 1992). It would be one thing if BT were to criticize this perspective; it is quite another to reject it out of hand, without being able to point to any counter evidence, or lapse from logic in the case.

The puzzle is that BT have also expressed themselves as if they were themselves Marxists, or at the very least libertarian Calhounians, when they refer to "preventing the undue exploitation of one group by another through the political process" (p. 22). But if there are no classes, how can one group organize with the purpose of exploiting another?

### **State and Market**

In the view of many commentators, the government is the only entity in society with a legal monopoly of force. The Mafia, the Blood, the Crips, and the Hell's Angels may all use coercion as part and parcel of their everyday activities, but the law does not legitimize such occurrences. The state, too, uses force, but it alone has the legitimacy that only the law can provide.

In sharp contradistinction, it is illegal for ordinary business firms to "take the law into their own hands." If faced with a customer who cannot pay his bills, it is impermissible for a corporation to send out "enforcers" or "leg breakers" to ensure that this does not occur too often. Instead, the aggrieved business must petition the state for redress, given the latter's monopoly over the use of coercion.

But this is not at all the perspective of BT. Instead, they are firm believers in the view of the state as part of the market. They maintain that:

"The market and the State are both devices through which co-operation is organized and made possible... The individual enters into an exchange relationship in which he furthers his own interest by providing some product or service that is of direct benefit to the

individual on the other side of the transaction. At base, political or collective action under the individualistic view of the State is much the same. Two or more individuals find it mutually advantageous to join forces to accomplish certain common purposes. In a very real sense, they 'exchange' inputs in the securing of the commonly shared output" (p. 19).

Say if you will that government is just another business firm. But realize that it is rather a special type of business firm, one that enjoys the police power. Under these assumptions, there are two kinds of firms: one that features the legitimate power to initiate violence against non aggressors, and the others, which do not. But this is rather awkward. Much simpler is the ordinary English language usage, eschewed by BT, according to which entities with the police power are called governments, and those without it are called corporations.

### **Public Service**

BT are on record with the quite reasonable view that when people enter government, they do not suddenly sprout angel's wings; that on the contrary, they maintain the same self interestedness they display as participants in the market sector. For example, they state: "... the average individual acts on the basis of the same over-all value scale when he participates in market activity and political activity." And they specifically criticise political theorists whose views "have been grounded on the implicit assumption that the representative individual seeks not to maximize his own utility, but to find the 'public interest' or 'common good.'" (p. 20).

All well and good. However, then, how can this sentiment be reconciled with the following:

"... both men (Robinson Crusoe, Friday) will recognize the advantages to be secured from constructing a fortress. Yet one fortress is sufficient for the protection of both. Hence they will find it mutually advantageous to enter into a political 'exchange' and devote resources to the construction of the common good" (p. 19).

Will neither Crusoe nor Friday engage in "opportunistic" behavior? Will neither attempt to get the other to contribute the lion's share to the common good, while he contributes as little as possible, and instead benefits



as a free rider? BT's depiction, as quoted above, sounds as if both men did sprout angel's wings.

### **Political Markets**

BT are very serious about the analogy between markets and politics. They go so far as to talk of the latter in terms of "political markets." But they go even further than this, likening Adam Smith's invisible hand to coercive collectivism:

"Adam Smith and those associated with the movement he represented were partially successful in convincing the public at large that, within the limits of certain general rules of action, the self-seeking activities of the merchant and the moneylender tend to further the general interests of everyone in the community. An acceptable theory of collective choice can perhaps do something similar in pointing the way toward those rules for collective choice-making, the constitution, under which the activities of political tradesmen can be similarly reconciled with the interests of all members of the social group" (p. 23).

Another analogy between political and economic market is that both are forms of exchange, and in each case the presumption is that these exchanges are mutually beneficial. Here is the BT claim:

"The economic approach, which assumes man to be a utility-maximizer in both his market and his political activity, does not require that one individual increase his own utility at the expense of other individuals. This approach (the Public Choice perspective of BT, that is) incorporates political activity as a particular form of *exchange*; and, as in the market relation, mutual gains to all parties are ideally expected to result from the collective relation" (p. 23; material in brackets supplied by present authors).

This is why BT claim that "the political process ... may be interpreted as a positive sum game" (p. 24). This is perhaps their most basic core fallacy. The very idea that politics, like economics, would be a mutually beneficial endeavor! A brief look at what goes on in Washington, D.C. (5) should disabuse even the most superficial scholar of politics of that particular notion. To be sure, there are beneficiaries. As it happens, most

of the richest counties in the U.S. are located within a few mile radius of the nation's capital. But a large part of the "business" of the denizens of this city consists of transferring vast amount of funds from some (the exploited) to others (the exploiters), with a significant percentage of the proceeds finding its way into the pockets of the "transferors" (Hill and Anderson, 1980; Osterfeld, 1988).

There is little doubt that what goes on in markets is indeed mutually beneficial. Trade is *always* beneficial in the ex ante sense, and usually so even in the ex post sense. That is because the commercial arrangements are at all times agreed upon by both parties to the exchange. The political "market," in sharp contrast, cannot boast of such mutuality. On the contrary, it is earmarked with predation, where one party (the net tax beneficiary) gains at the expense of the other (the net tax payer).

### Charles Beard

Happily, BT do not rest content with mere assertion. They instead consider a theory contrary to their own, that of Charles Beard. In their criticism, they charge him with "the failure to distinguish two quite different approaches to political activity, both of which may be called, in some sense, economic" (p. 25). The first is their own.

"The second approach assumes that the individual is motivated by his position or class status in the production process. The social class in which the individual finds himself is prior to, and determines, the interest of the individual in political activity. In one sense, the second approach is the opposite of the first since it requires that, on many occasions, the individual must act contrary to his own economic interest in order to further the interest of the social class or group to which he belongs.

"Beard attempted to base his interpretation of the formation of the American Constitution on the second, essentially the Marxist, approach, and to explain the activities of the Founding Fathers in terms of class interest. As Brown has shown, Beard's argument has little factual support, in spite of its widespread acceptance by American social scientists" (p. 26).

But this critique is not without flaws of its own. First of all, an

economic critique of U.S. Constitutionalism need not rely on the view that social class, rather than self interest, would be the primary motivating force. One can borrow a leaf from the Calhounian notebook, and interpret self centered activity in the political realm not in support of group interests, but in terms of individual ones. Second, social class can be seen as a proxy for self interest. That is, one may support one's own group not out of love for it per se, but out of the belief that this is the most efficient means toward self aggrandizement. Third, there is an internal contradiction in this analysis. The BT view of men not sprouting angel's wings when they enter public service is compatible with what BT have to say about Beard. So why are they criticizing him, given that he does no more than BT do themselves? According to the logic of BT's critique of Beard, their own theory, too, is "Marxist."

Let us put this into other words: BT claim that their theory utilizes "the individualist-economic, or the utility-maximizing assumption about behavior in the political process" (p. 27). Well, so, too, does Beard's, if we interpret him sympathetically. If we do not, we may still rely on the Calhounian class analysis to make essentially the Beardian point, that the "fix" was in, with regard to the creation of the U.S. constitution; e.g., that this process was a product of utility maximization applied to the political process. This is what BT's theory is all about. Why do they so strenuously object to the very same theorizing when it appears in the work of Beard, or of Calhoun?

### **Methodological Individualism**

BT announce themselves as methodological individualists. By this they mean to reject the "organic conception of the collective unit." They see methodological pluralism as "essentially opposed to the Western philosophical tradition in which the human individual is the primary philosophical entity." Moreover,

"since we propose to construct a theory of collective choice that has relevance to modern Western democracy, we shall reject at the outset any organic interpretation of collective activity" (p. 11).

This is all well and good, not only because it is consonant with Western traditions. There is also the obvious point that there is no such thing as a "group will" or a "group mind." If the social sciences are to study

group behavior, they will perform have to do it by analyzing individuals, as they interact with one another. (6)

What, then, are we to make of BT when they refer to "the objectives of the group as a whole." They do so in the following context:

"Insofar as possible, institutions and legal constraints should be developed which will order the pursuit of private gain in such a way as to make it consistent with, rather than contrary to, the attainment of the objectives of the group as a whole" (p. 27).

The obvious rejoinder is to cite the BT of p. 11 against the BT of p. 27. The point is, there are no objectives of the "group as a whole." Only individuals can have objectives. The group as such cannot. Or, to put this in another way, any objectives that the group as a whole is supposed to have can either be reduced to the objectives in the minds of the individuals that comprise it, or are nonexistent and nonsensical.

The reference of BT to "the objectives of the group as a whole" is rendered even the more puzzling by a passage that occurs a few pages later. Here, they state,

"Are we to consider the collectivity as the decision-making unit, and therefore, are we to scale or order collective choices against some postulated social goal or set of goals? Or, by contrast, are we to consider the individual participant in collective choice as the only real decision-maker and, as a result, discuss rational behavior only in terms of the individual's own goal achievement? It is evident from what has been said before that we shall adopt the second of these approaches" (p. 31).

How, then, to explain BT's "the objectives of the group as a whole?"

## **Rationality**

BT defend the neoclassical position on this issue:

"To judge whether or not individual behavior is 'rational' or 'irrational,' the economist must try first of all to place some general minimal restrictions on the shapes of utility functions. If he is

successful in this effort, he may then test the implications of his hypotheses against observed behavior.

"Specifically, the modern economist assumes as working hypotheses that the average individual is able to rank or to order all alternative combinations of goods and services that may be placed before him and that this ranking is transitive. Behavior of the individual is said to be 'rational' when the individual chooses 'more' rather than 'less' and when he is consistent in his choices" (p. 33).

This may well be the traditional stance in this regard, but it is highly problematic. First of all, how will the economist know if he is successful in his effort to "place some general minimal restrictions on the shapes of utility functions?" Is there an independent criterion, over and above "testing the implications of his hypotheses against observed behavior"? (p. 33). Secondly, why the transitivity requirement? Why can't a person prefer a } b, b } c, and then c } a? If these are truly independent events there is no logical reason to suppose that this cannot occur. It takes place, continually, in every day life: on day one a person prefers apples to oranges; on day two he chooses oranges over bananas; and on day three he picks bananas instead of apples.

Thirdly, "consistency in choices" implies a denial of the fact that these pair-wise comparisons are truly independent. The implication, here, is that there are not three separate events: choosing between a and b, b and c, and then c and a. Transitivity implies that they all occur at the same point. But it is impossible to make more than one choice at any given time. Fourth, BT must implicitly assume that the individual who does the ranking cannot change his mind. And why not? Solely, it would appear, so that we can "test" the theory. But this is only a logical positivist fetish (Rothbard, 1962; Mises, 1963; Hoppe, 1988, 1991, 1992; Blanschard, 1964). Why should we allow the strictures of this philosophy to deny that which we full well know is true, namely that people do indeed change their minds?

## **Trade, Economies of Scale**

According to Buchanan and Tullock (1971):

"...when individual interests are assumed to be identical, the main body of economic theory vanishes. If all men were equal in interest and endowment, natural or artificial, there would be no

organized economic activity to explain. Each man would be a Crusoe. Economic theory thus explains why men co-operate through trade: they do so because they are different" (p. 4).

This appears as if it should be true, but it is not. Even under the conditions posited by BT, exchange would still occur. This is because of economies of scale, and the benefits of specialization. Two people might have the same potential to be a concert pianist or a brain surgeon. If they each do both, they will achieve an indifferent level of success. In contrast, if the first spends all of his time on the one, and the second on the other, they will each become far more skilled. But if they specialize in this manner, they will have to trade, even though they also have the same tastes, provided only that they wish to consume both services.

### **Political Truth**

In like manner, their analysis of "political theorists" (p. 4) sounds like a truism, but is no such thing. In the view of BT:

"Political theorists, by contrast, do not seem to have considered fully the implications of individual differences for a theory of political decisions. Normally, the choice-making process has been conceived of as the means of arriving at some version of 'truth,' some rationalist absolute which remains to be discovered through reason or revelation, and which, once discovered, will attract all men to its support."

There are several problems here. First, it is unclear what an explanation for trade has to do with "truth" in politics. Certainly the one does not logically imply the other. That is, one may take BT's mistaken explanation of trade in terms of differences, and combine it with their view of "truth," or the very opposite. In neither case would there be a self contradiction. Second, revelation on the one hand, and either rationalism or reason on the other, do seem to be at least somewhat incompatible. One wonders at the juxtaposition of these two very different epistemological categories, unless of course revelation is merely being wielded to cast doubt and aspersions on the possibility of achieving "truth" in the political realm. Third, we hereby confess to having a soft spot for this very doctrine. It is our belief, perhaps naive, that one day all those calling themselves rational will subscribe to the free enterprise philosophy. If BT dismiss this as blind

faith, so be it.

## Conclusion

BT fail utterly to distinguish between collectivism and coercion, one of the most important distinctions in all of political economy. They think, in effect, that when we wish to do something collectively, that is, with many participants, we must of necessity initiate aggression against non aggressors. This leads them into a series of errors concerning anarchism, ruling class, the analogy between economics and politics, democracy, contracts, public service, methodological individualism and rationality. (7)

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## Notes

(1) Compared to many writers, of course, they are this, and more.

(2) All otherwise unidentified page citations refer to this book.

(3) According to BT, "Our theory of constitutional choice has normative implications only insofar as the underlying basis of individual consent is accepted" (p. 7).

(4) We are grateful to Stephen Kinsella for pointing out the necessity of combining the Rothbardian contractual analysis with the theory of the origin of the state.

(5) Or in any of the state capitols, or, indeed, in the councils of most cities, towns and villages (Bolick, 1993).

(6) For a criticism of Nozick (1977) on this point, see Block (1980).

(7) See also DiLorenzo and Block, forthcoming; Block, forthcoming A; Block, forthcoming B; Rothbard, 1997.

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