

**MUTUAL ADVANTAGE IN CONSTITUTIONAL BARGAINING:  
A RETROSPECTIVE ON *THE CALCULUS OF CONSENT***

by Giacomo Brioni

*Introduction*

Forty years ago, on October 16, 1986, James M. Buchanan was awarded the Nobel Prize in economics “for his development of the contractual and constitutional bases for the theory of economic and political decision-making”<sup>1</sup>. The adjectives *contractual* and *constitutional* capture the essence of the project to which Buchanan devoted his entire career: to clarify the logic of mutual advantage underlying free institutions and to persuade social scientists that they should not approach their normative task with the attitude of a “benevolent despot”, imposing their own value-judgements about “social welfare” on individuals<sup>2</sup>.

Many of Buchanan’s works could illustrate his social philosophy. However, the most important single book to this effect is certainly *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, published in 1962 and co-authored with Gordon Tullock<sup>3</sup>.

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<sup>1</sup> *The Royal Swedish Academy of Sciences Press Release*, 16 October 1986, reprinted in *The Logical Foundations of Constitutional Liberty (The Collected Works of James M. Buchanan, Vol. 1)*, Indianapolis, Liberty Fund, 1999, pp. 3-7.

<sup>2</sup> See R.E. WAGNER, *James Buchanan and Liberal Political Economy: A Rational Reconstruction*, Lanham, Lexington Books, 2017.

<sup>3</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Indianapolis, Liberty Fund, 1999. Many believe that Tullock also deserved a Nobel Prize for this and other important contributions, such as the theory of rent seeking, see for instance K. HAUSKEN, *Gordon Tullock: A Nobel Prize left unbestowed*, “Journal of Bioeconomics”, vol. 18, 2018, pp. 121-127.

The *Calculus* is a foundational book for at least two reasons. First, it helped establish public choice theory, that is, the economic approach to politics. This theory shifted the tools of rational choice from the analysis of economic competition to non-market settings, based on the assumption that individuals are guided by self-interest in both domains<sup>4</sup>.

Early public choice scholars often emphasized the structural differences between markets and democratic politics, highlighting issues such as inconsistencies in preference aggregation (as in Kenneth J. Arrow's 1951 *Social Choice and Individual Values*) and the prevalence of zero-sum games (like William H. Riker in his 1962 book *The Theory of Political Coalitions*). Buchanan and Tullock, however, offered a different perspective. Rather than focusing on the ordinary functioning of political competition, they examined the behavior of individuals in constitutional choice, where the rules of the game are chosen. Since these rules shape strategy sets, payoffs and costs in future interactions, rational agents have the incentive to select norms that reduce the risk of discriminatory outcomes. In this light, politics becomes a form of exchange, or a long-term positive-sum game.

Second, the *Calculus* holds a place in the revival of liberalism in the second half of the twentieth century. The 1960s saw the publication of Friedrich A. Hayek's *The Constitution of Liberty* (1960), Bruno Leoni's *Freedom and the Law* (1961) and Milton Friedman's *Capitalism and Freedom* (1962). These works revitalized the argument in favor of free markets and limited government, which seemed to have lost ground to the Keynesian and generally "progressive" consensus in previous years<sup>5</sup>. Then, the 1970s saw an intense debate about freedom, equality and distributive justice through books such as John Rawls' *A Theory of Justice* (1971), Robert Nozick's *Anarchy, State and Utopia* (1974), and Hayek's *Law, Legislation, and Liberty* (1973-1979).

In this context, Buchanan and Tullock's approach is distinctively *economic* and *contractarian*<sup>6</sup>. Unlike the normative theories of Rawls and Nozick, the *Calculus* does not frame the justification of institutions as a

<sup>4</sup> For an overview see C.K. ROWLEY, *Public Choice and Constitutional Political Economy*, in C.K. ROWLEY, F. SCHNEIDER (eds.), *Readings in Public Choice and Constitutional Political Economy*, New York, Springer, 2008, pp. 3-30.

<sup>5</sup> See A. MASALA, *Crisi e rinascita del liberalismo classico*, Pisa, Edizioni ETS, 2012.

<sup>6</sup> See A. WEALE, *Modern Social Contract Theory*, Oxford, Oxford University Press, 2020.

problem of moral obligation; instead it develops a theory of bargaining that starts from the economic value individuals assign to future opportunities<sup>7</sup>. At the same time, Buchanan and Tullock reject Hayek and Leoni's evolutionary account of the origin of law and the market, favoring instead a form of constructivist constitutionalism. In this respect, they are closer to Rawls, as they articulate the choice of rules as a decision procedure under uncertainty, akin to the "veil of ignorance"<sup>8</sup> (later named the "veil of uncertainty" for its less demanding restrictions on information)<sup>9</sup>. Yet the driving intuition behind their constitutionalism has a Madisonian character: rules are chosen to diffuse and limit the exercise of political power in a society of self-interested individuals<sup>10</sup>.

The critical literature is already rich with retrospective evaluations of the book and discussions of its legacy<sup>11</sup>. This paper therefore focuses on more specific aspects of the *Calculus*' constitutional theory that nevertheless have broader implications for interpreting its mutual advantage paradigm. The next two sections argue that Buchanan and Tullock's account of constitutional bargaining combines two models: Ronald Coase's contractual approach to externalities and Rawls' veil of ignorance. The first captures the dynamic nature of exchange, while the second describes

<sup>7</sup> On this aspect see J. THRASHER, G. GAUS, *The Calculus of Consent* in J. LEVY (ed.), "The Oxford Handbook of Classics in Contemporary Political Theory", Oxford, Oxford University Press, 2017; H. KLIEMT, *The Calculus of Consent After Thirty Years*, in "Public Choice", n. 3-4, 1994, pp. 341-353 (p. 342). On this aspect see J. THRASHER, G. GAUS, *The Calculus of Consent* in J. LEVY (ed.), in "The Oxford Handbook of Classics in contemporary Political Theory", Oxford, Oxford University Press, 2017; H. KLIEMT, *The Calculus of Consent After Thirty Years*, in "Public Choice", n. 3-4, 1994, pp. 341-353 (p. 342).

<sup>8</sup> See R. EPSTEIN, *Hayek's Constitution of Liberty—a guarded retrospective*, in "Review of Austrian Economics", vol. 30, pp. 415-446.

<sup>9</sup> See G. BRENNAN, J.M. BUCHANAN, *The Reason of Rules: Constitutional Political Economy*, Cambridge, Cambridge University Press, 1985. As I will explain in the next paragraph, Buchanan and Tullock emphasize uncertainty over future positions and interests but do not abstract from individual differences in talents.

<sup>10</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 24-25.

<sup>11</sup> See H. KLIEMT, *The Calculus of Consent After Thirty Years*, cit., pp. 341-353 (p. 342); C.E. HAIGHT, A. MARROQUIN GRAMAJO, N.G. WENZEL, *The Calculus of Consent: 50th Anniversary*, in "Laissez-Faire", vol. 35, 2011, pp. 83-85; the special issue "*The Calculus of Consent After Fifty Years*", in "Public Choice", vol. 152, n. 3-4, 2012; D.R. LEE (ed.), *Public Choice, Past and Present: The Legacy of James M. Buchanan and Gordon Tullock*, New York, Springer, 2013; N. BERGGREN, *The Calculus of Consent "at Fifty": Insights for Liberalism*, in "The Independent Review", vol. 18, n. 3, 2014, pp. 373-389.

the type of rationality concerned with the long-term utility of the political order. Yet this framework leaves key issues unexamined, such as the origin of property rights. The final section discusses contributions that preserve the essence of politics as exchange, while correcting some of its deficiencies through evolutionary or realist insights.

1. *Coase or Rawls? Trading, individual differences, and the social contract*

The debate surrounding the *Calculus* and its legacy has focused primarily on the concept of exchange. Concerns have been raised about its precise meaning and its consistency with the methodology of public choice: specifically, whether it risks introducing an element of “romance” (a natural form of cooperative harmony) into a framework that assumes that individuals, motivated by self-interest, pursue sectional benefits through the social process, even at others’ expense<sup>12</sup>. Second and related, Buchanan and Tullock’s veil of uncertainty is subject to the usual objections leveled against Rawls, particularly by realist critics. According to the latter, the veil arbitrarily neutralizes conflict and portrays individuals as pure moral agents immune from strategic incentives<sup>13</sup>. The prevailing consensus is that Buchanan recognized these pitfalls and switched to a Hobbesian model in his 1975 book *The Limits of Liberty*<sup>14</sup>. This new account replaces the earlier “Kantian”<sup>15</sup> and

<sup>12</sup> For several insights about the tension between normative and positive aspects of constitutional political economy, see the essays in P.J. BOETTKE, S. STEIN (eds.), *Buchanan’s Tensions: Reexamining the Political Economy and Philosophy of James M. Buchanan*, Arlington, Mercatus Center at George Mason University, 2018.

<sup>13</sup> A synthesis and critique of objections which raise the problem of power in relation to Buchanan’s thought is offered in J. MEADOWCROFT, *Exchange, unanimity and consent: a defence of the public choice account of power*, in “Public Choice”, vol. 158, n. 1-2, pp. 85-100. For a general discussion of the veil of ignorance from a realist point of view see R. GEUSS, *Philosophy and Real Politics*, Princeton and Oxford, Princeton University Press, 2008.

<sup>14</sup> See S. DUGHERA, A. MARCIANO, *Buchanan and the Social Contract: Coordination Failures and the Atrophy of Property Rights*, in “Southern Economic Journal”, 2025 (Early view, published online), pp. 1-14.

<sup>15</sup> Hartmut Kliemt coined the term “Bukantianism” to describe Buchanan’s perspective on political economy as the science of “agreement-seeking” and human “participation on a common project” under a model of “symmetric rationality”. See H. KLIEMT, *Bukantianism-Buchanan’s philosophical economics*, in “Journal of Economic Behavior and Organization”, vol. 80, 2011, pp. 275-279 (especially p. 278).

Rawlsian emphasis on “analytical egalitarianism”<sup>16</sup> with a cruder account of the emergence of the state from natural conflict.

These observations point to important limitations in the *Calculus*. Yet the book’s conception of exchange cannot be reduced to a normative abstraction superimposed on a methodology of economic realism. Although the *Calculus* relies on the constitutional perspective to conceptualize politics in terms of mutual advantage, Buchanan and Tullock seek to dynamize the reasoning of the representative individual in the choice of rules by introducing several ‘spontaneous’ solutions for the internalization of externalities, considered prior to the emergence of a need for ‘constitutional engineering’. I argue that this reflects features the *Calculus* shares with the economic and legal theory of Ronald Coase<sup>17</sup>. These features help moderate the abstractness of veil-like constructions and capture the dimension of economic behavior oriented towards gains from trade.

The ‘modest’ anthropological assumption on which Buchanan and Tullock build their social philosophy is that individuals fundamentally seek to better their own condition. Since individual welfare is subjectively defined and interpersonal comparisons of utility are considered impossible, the only criterion by which the efficiency of a social change can be judged is the Pareto rule: “the ‘welfare’ of the whole group of individuals is said to be increased if (1) every individual in the group is made better off, or (2) if at least one member in the group is made better off without anyone being made worse off”<sup>18</sup>. Market exchanges are the

<sup>16</sup> For an examination of this concept in Buchanan’s writings see D.M. LEVY, S.J. PEART, *Towards an Economics of Natural Equals: A Documentary History of the Early Virginia School*, Cambridge, Cambridge University Press, 2020.

<sup>17</sup> The kinship between Buchanan, Tullock and Coase has been explored in the historical literature on the Virginia School; see D.M. LEVY, S.J. PEART, *Towards an Economics of Natural Equals*, cit., especially pp. 246-254, and A. MARCIANO, *James Buchanan and Peaceful Cooperation*, Cambridge, Cambridge University Press, 2024, pp. 54-56 (Marciano focuses especially on the *Calculus* and argues that Buchanan and Coase reached similar results more or less simultaneously). On the theoretical side, the most thorough comparison is provided in B. HSIUNG, *On the Equivalence and Non-Equivalence of James Buchanan and Ronald Coase*, in “Journal of Institutional and Theoretical Economics (JITE)”, n. 4, 2000, pp. 715-736. My results are similar to Hsiung’s in that I, too, recognize the compatibility between the two approaches as contractual models of politics. However, while Hsiung conceptualizes Coase’s argument to fit the veil of uncertainty through single-owner maximization, I argue that Buchanan and Tullock used Coasian concepts to relax the veil’s abstract constraints.

<sup>18</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 172-173.

paradigmatic example of a Pareto-efficient change. In the absence of external threats or coercion, the very fact that a transaction has been completed retroactively reveals that the individuals involved valued what they received more highly than what they gave up in exchange.

Problems arise when a transaction imposes unwanted effects on a third party, that is, external costs. From the perspective of a conflict-based theory, this becomes a purely political relation: potential coalitions form to forcibly influence one another's behavior, and the system shifts to a strategic struggle between opposing forces<sup>19</sup>. However, Buchanan and Tullock argue that this outcome is not inevitable. Although such situations are far removed from an identity of interests, individuals may recognize that external costs amount to unrealized gains from trade and to a restriction in the present opportunity set, thereby making all parties worse off<sup>20</sup>.

It is here that Coase's theory, famously articulated in the 1960 essay *The Problem of Social Cost*, becomes relevant. If property rights are well defined and there are no transaction costs, externality issues can be solved through private bargaining: the party that values its own activity more highly will compensate the other for changing its conduct<sup>21</sup>. One classic example is a firm whose operations unintentionally pollute a nearby stream<sup>22</sup>, killing the fish population and damaging the local fishermen's activity. If continuing production remains worthwhile, the firm will compensate the fishermen, who in turn will accept if the payment exceeds the costs imposed by pollution (or vice versa in the case of reversed evaluations). The implication of Coase's analysis is that, under certain conditions, the scope for voluntary organization is broader than standard theories of "market failure" would suggest.

<sup>19</sup> The extreme version of such view (politics as an existential struggle between groups) is expressed in C. SCHMITT, *The Concept of the Political*, Chicago, The University of Chicago Press, 2007. Schmitt's constitutional theory, based on discretionary power in the state of exception, is the polar opposite of the mutual advantage view of the *Calculus*.

<sup>20</sup> This is why Buchanan and Tullock prefer to speak of utility rather than "power-maximization", see J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 23-24.

<sup>21</sup> See R.H. COASE, *The Problem of Social Cost*, in "The Journal of Law and Economics", vol. 3, 1960, pp. 1-44.

<sup>22</sup> Quoted by Coase from George Stigler's *Theory of Price*.

Buchanan and Tullock take this as the baseline consideration that individuals make under the veil in the constitutional moment<sup>23</sup>.

“The existence of external costs (or the existence of any externality) creates opportunities for mutually advantageous “trades” or “bargains” to be made among individuals affected and also profit possibilities for individuals who are acute enough to recognize such situations. Furthermore, if we disregard the costs of making the required arrangements, voluntary action would more or less automatically take place that would be sufficient to “internalize” all externality, that is, to reduce expected external costs to zero”<sup>24</sup>.

Once again, it is stated that social interaction is not reducible to conflicts of principles; individuals implicitly or explicitly assign an economic value to the pursuit of their own goals, such that the central problem becomes how to remove obstacles to greater gains. The comparison to be made is between the *status quo*—a no-trade position where conflict wastes resources—and a potential arrangement with richer gains from trade. The model argument here is the theory of comparative advantage, where specialization boosts productivity and wealth.

According to Buchanan and Tullock, the calculus of the representative individual in constitutional choice involves ranking possible forms of organization for any kind of human activity, with reference to the relation between the expected external costs (both those that stem from the activity itself and from the chosen organizational form) and decision-making costs, that is, the time and resources required to reach agreement. Three solutions are considered: pure private (individual) behavior, voluntary association, and collectivization. The latter is treated as a last-resort option, after all other possibilities have been exhausted and significant external costs persist. In the authors’ words, “*the existence of external effects of private behavior is neither a necessary nor a sufficient condition for an activity to be placed in the realm of collective choice*”<sup>25</sup>.

<sup>23</sup> Buchanan and Tullock make only two explicit references to Coase in their footnotes: J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 54, n. 6; p. 91, n. 2—but his conceptual apparatus echoes throughout the text.

<sup>24</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 90, also quoted in A. MARCIANO, *James Buchanan and Peaceful Cooperation*, cit., p. 55.

<sup>25</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of*

Note that, while the comparison is conducted from an abstract point of view, external and prior to the actual social process<sup>26</sup>, Buchanan and Tullock still incorporate into the individual's reasoning a sort of simulated 'evolutionary history' of social organization, which stands in contrast with the all-or-nothing alternative between market and collective action embodied in the earlier tradition of welfare economics. For instance, drawing on Coase's *The Nature of the Firm*, Buchanan and Tullock describe the business firm as the chief example of an organization that, while still being voluntary, is more efficient than purely private activity, since it overcomes the transaction costs inherent in a network of single contracts and allows to internalize the "increasing returns to scale of production over the initial ranges of output"<sup>27</sup>.

Another example is urban development. Buchanan and Tullock consider the proposal to build a "suburban shopping center" in an area where "the several parcels of land are initially owned by separate individuals". Since external economies are to be expected from "co-ordinated development" and the size of the group is "reasonably small", individual will be incentivized to "organize contractual arrangement that will 'internalize' most of the relevant external diseconomies". If further spillover effects arise from the new organization ("neighborhood atmosphere, view, absence of noise, etc."), the increase in property value could be internalized through a shift from individual ownership to some form of shared arrangement, such as "corporate ownership of titles with individual leaseholds", or, alternatively, through a comprehensive buy-out by a single owner<sup>28</sup>.

The same approach could be applied to the management of various common pool resources. Buchanan hadn't yet published his essay *An*

*Constitutional Democracy*, cit., p. 61 (emphasis in the original), also quoted in A. MARCIANO, *James Buchanan and Peaceful Cooperation*, cit., p. 50.

<sup>26</sup> This is observed in H. KLIEMT, *The Calculus of Consent After Thirty Years*, cit. The actual choice of what activities to collectivize is itself a *collective* choice. This represents a deviation from the *Calculus*' individualism. My argument in this paragraph shows that Buchanan and Tullock are somewhat aware of this limitation.

<sup>27</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 54; cp. with R.H. COASE, *The Nature of the Firm*, in "Economica", vol. 4, 1937, pp. 386-405.

<sup>28</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 56-57.

*Economic Theory of Clubs*, but the idea of club-like arrangements as an alternative way to provide public goods for small groups is already part of the *Calculus*' conceptual toolbox<sup>29</sup>. Collective action becomes necessary when a critical threshold in group size is crossed or when negotiations become too complex. Social evolution, however, is not teleologically oriented towards increasing centralization.

“Before making a permanent choice among the alternative organizations of activities, it is essential to recognize that the costs of organizing voluntary co-operative arrangements will not be so great in a dynamic situation as they will be in a static one. Over a period of development and growth, institutional changes are accomplished with much greater ease”<sup>30</sup>.

Fixed-resource environments give rise to problems of fair division that appear difficult to resolve without recourse to state intervention. By contrast, economic growth and experimentation with voluntary arrangements generate information about entrepreneurial opportunities. Buchanan and Tullock thus seem to envision a polity where only the provision of central services (like national defense) remains the responsibility of national government, while lower-level political and organizational units handle the rest. In this spirit, they defend federalism as a means of dispersing political conflict<sup>31</sup>.

An important feature that distinguishes Buchanan and Tullock's constitutional scenario from the Rawlsian one is that individual differences in productive capacities and bargaining power are not removed from the picture at this stage. Rawls famously wanted to reconcile the moral intuition that individual conceptions of the good should be respected with the elaboration of a constitutional decision procedure that takes into account only those “aspects of persons which are morally significant” and ignore those that are “arbitrary from a moral point of view”. The latter include “a person's talents, social environment, and whatever arises from

<sup>29</sup> Compare J.M. BUCHANAN, *An Economic Theory of Clubs*, in “*Economica*”, vol. 22, n. 125, 1965, pp. 1-14. See A. MARCIANO, *James Buchanan and Peaceful Cooperation*, cit., pp. 60-65; H. KLIEMT, *The Calculus of Consent After Thirty Years*, cit., p. 350.

<sup>30</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 57.

<sup>31</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 113-115.

them”, since they are largely determined by external factors<sup>32</sup>. As we will see, Buchanan and Tullock share some of Rawls’ concerns, especially with respect to the requirement that institutional rules should not protect sectional interests. However, this does not imply that individual differences generating inequalities in post-trade positions should be leveled<sup>33</sup>. What matters is simply that some set of property rights is fixed at the outset as a coordination baseline. In Coasian terms, its content is irrelevant, provided that individuals remain free to contract around it: the resulting allocation will be Pareto-efficient. This is perhaps the aspect of the *Calculus* that many critics find unsettling. Most normative theories that follow Rawls’ constructivism equate fairness with impartiality, and argue that the choice of principles of justice should not depend on relative bargaining power. By contrast, Buchanan and Tullock maintain that supposedly ‘unfair’ distributive configurations may prove less morally and economically relevant to individuals than the prospective welfare increases from cooperation<sup>34</sup>.

However, Buchanan and Tullock do not push the Coasian approach to the conclusion that a system exclusively based on voluntary arrangements is efficient. As Mancur Olson argues in *Power and Prosperity*, such a system would likely collapse under the weight of transaction costs and free-rider problems<sup>35</sup>. Moreover, its economic performance might be suboptimal, as it would fail to provide the public infrastructure required for an extended market environment. Buchanan and Tullock contend that individuals would acknowledge these constraints at the

<sup>32</sup> This summary of Rawls’ position is taken from M. ZWOLINSKI, *The Separateness of Persons and Liberal Theory*, in “The Journal of Value Inquiry”, vol. 42, 2008, pp. 147-165 (quotations are on pp. 157-158). Compare for instance with J. RAWLS, *A Theory of Justice*, Cambridge (MA), The Belknap Press, 1971, p. 15.

<sup>33</sup> See B. JACKSON, Z. STEMPOWSKA, “A Quite Similar Enterprise ... Interpreted Quite Differently”? *James Buchanan, John Rawls and the Politics of the Social Contract*, in “Modern Intellectual History”, vol. 18, 2021, pp. 1-24.

<sup>34</sup> The best presentation of this opposition can be found in B. BARRY, *A Treatise on Social Justice, Volume 1: Theories of Justice*, Berkeley-Los Angeles, University of California Press, 1989. Barry finds the origin of the “mutual advantage” approach in Hume and interprets Buchanan as its most radical representative in contemporary political theory (see pp. 173-175). Barry was also one of the first to acknowledge a Coasian vein in the *Calculus*; see B. BARRY, *Political Argument*, London, Routledge, 1965, ch. XIV-XV.

<sup>35</sup> See M. OLSON, *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships*, New York, Basic Books, 2000, pp. 45-68.

constitutional stage: collective action thus emerges as the outcome of a rational economic calculus. This still constitutes an exchange, albeit in a different form, insofar as individuals are now willing to trade a portion of their income (the tax) as a price for public goods<sup>36</sup>. It must also be noticed that Coase himself did not see his work as a scientific “theorem” about the efficiency of contractual solutions to externalities (as George Stigler would later interpret it). Coase recognized the impact of transaction costs in real-world scenarios and stressed the need for well-designed political and legal institutions that clarify the rules for the circulation of property rights both in private- and public-goods transactions<sup>37</sup>. Buchanan and Tullock’s constitutional perspective captures this fundamental *caveat*.

It is at this point that a thicker veil of ignorance becomes an appropriate representation of the constitutional procedure. Once the need for comprehensive collective action is acknowledged, attention shifts to ensuring that the chosen organizational form minimizes the external costs arising from political decisions, where the decisive coalition is often smaller than the total reference group. A mutual advantage order becomes possible only under conditions of uncertainty about future positions and the specific content of individual interests<sup>38</sup>. From this perspective, the ideal benchmark is Knut Wicksell’s unanimity rule, which Buchanan and Tullock identify as the political counterpart of the Pareto criterion<sup>39</sup>. Given the high transaction costs associated with unanimity, individuals may settle for a compromise, allocating some choices to

<sup>36</sup> This is the teaching Buchanan draws from the democratic theory of public finance developed by Antonio de Viti de Marco; cp. J.M. BUCHANAN, *The Pure Theory of Government Finance: A Suggested Approach*, in “Journal of Political Economy”, vol. 57, n. 6, 1949, pp. 496-505; A. DE VITI DE MARCO, *Principii di economia finanziaria*, Torino, Einaudi, 1934.

<sup>37</sup> On the neoclassical (mis)understandings of Coase’s work see B.M. FRISCHMANN, A. MARCIANO, *Understanding The Problem of Social Cost*, in “Journal of Institutional Economics”, vol. 11, n. 2, 2015, pp. 329-352; A. MARCIANO, *Why is Stigler’s Coase’s Theorem Stiglerian?*, in L. FIORITO, S. SCHEALL, C.E. SUPRINYAK (eds.), *Research in the History of Economic Thought and Methodology, Vol. 36a*, Bingley, Emerald Publishing, 2018, pp. 127-158.

<sup>38</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 78.

<sup>39</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 8, 85-96.

simple majority, and other to more demanding voting thresholds. In addition, uncertainty incentivizes individuals to confine collective choice to *general* rules and to place limits on the “range” and “extent” of collectivization (that is, the amount of activities assigned to the public sector and the incentive structure governing their administration)<sup>40</sup>.

## 2. *Decision-making rules and side payments*

Another instance where Buchanan and Tullock try to dynamize the picture of individual decision-making in the constitutional moment concerns the choice of rules for collective decisions. Chapters 10-13 of the *Calculus* are devoted to a cost-benefit analysis of simple majority rule, which is widespread in real democratic systems and appears to be the most intuitive and efficient compromise between external costs and decision-making costs. Buchanan and Tullock challenge this view, arguing that it may be rational to limit the scope of majority rule from the standpoint of constitutional choice. However, they do not immediately point to the unanimity rule; they explore whether power asymmetries within majority rule can be endogenously transformed into situations of mutual advantage. Again, I would argue that this is achieved through a simulated series of Coasian bargains, which, however, reveal their limitations when the efficient amount of redistribution is taken into account.

Starting with chapter 10 of the book, Buchanan and Tullock famously argue that simple majority rule leads to a social waste of resources. “Kantian” voters whose conduct is guided by ethical standards, or who would vote only for public goods that provide general benefits, are discouraged by “rational maximizers” who push their special interests by threatening to veto any measure proposed by others<sup>41</sup>. As the maximizing strategy invades the population of players, stalemates are only broken by minority coalitions that try to bribe marginal voters in the majority to secure consent in exchange for reciprocal support. The result is not only an expansion of the public budget but also an inefficient distribution of costs in Paretian terms. Since legislation is largely

<sup>40</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 204-207.

<sup>41</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 138-139.

financed through general taxation, the losing minority bears a disproportionate share of the cost without corresponding gains. Buchanan and Tullock implied answer as to why people engage in such inefficient interactions is that they are caught in a Prisoner's Dilemma-type of situation: all players are incentivized to be short-term maximizers because that's the best response to every move of the counterpart, yet the resulting equilibrium is collectively suboptimal<sup>42</sup>.

However, the scenario presented above already contains an element of bargaining which makes it easier to deal with the problem of preference intensity and the seeming imbalance in gains and losses (it also accounts for the continued adoption of simple majority in many contexts): the exchange of political support across present and future decisions, or *logrolling*.

“Applying the strict Pareto rules for determining whether one social situation represents an improvement over another, almost any system of voting that allows some such exchange to take place would be superior to that system which weights all preferences equally on each issue”<sup>43</sup>.

As Buchanan and Tullock clarify, logrolling is likely to occur across a range of decision contexts, from single-issue referendums to the more complex construction of party platforms, where “political entrepreneurs” bundle together packages of issues to secure the support of specific groups. A given group may vote for the party if its particular demand is satisfied, “although [it] may be opposed to the party stand on all other issues”<sup>44</sup>.

A more explicit form of logrolling is the one that allows votes to be exchanged for money: their value is translated to full side payments. “In a very real sense, the introduction of full side payments serves to create a marketable property right in the individual's political vote, his power of collective decision”<sup>45</sup>. Side payments are a Coasian device, insofar as

<sup>42</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 140-142.

<sup>43</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 133.

<sup>44</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 136.

<sup>45</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 187.

they allow parties to assign a *price* to the external costs of political choices. Losing parties can then be compensated for the losses they incur from an adverse outcome; alternatively, they may bargain with proponents of the policy to dissuade them from taking action. The radical implication of this considerations is that the specific decision rule in operation, including simple majority, becomes irrelevant with respect to the attainment of Pareto-optimal outcomes<sup>46</sup>.

However, Buchanan and Tullock point out that this exchange mechanism is not effective in determining the overall level of political redistribution, nor the productivity and character of public expenditure (and explicit logrolling with side payments is also counterintuitive in most Western moral systems). Moreover, a certain degree of “fiscal illusion” is endemic to the democratic process, insofar as decisions about financing schemes are often separated from expenditure proposals, leaving individuals unaware of the real costs of special interests policies<sup>47</sup>. The widespread reliance on public debt, where the incidence on future generations tends to be misperceived, is a clear symptom of this distortion<sup>48</sup>. Once again, the choice of rules of the game becomes central to addressing these problems, and the case for qualified majority rules is reinforced. Individuals in constitutional choice may also determine that real income redistribution should be organized through general social insurance schemes, rather than through simple majority transfers. Furthermore, they may impose informational requirements about financing on public expenditure propositions<sup>49</sup>.

According to Buchanan and Tullock, the constitutional point of view exceeds the limit of the standard Pareto criterion because it allows

<sup>46</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 187-189.

<sup>47</sup> Buchanan borrows the concept of “fiscal illusion” from Amilcare Puviani’s 1903 book on the subject, and extends its application from public finance to political theory: A. PUVIANI, *Teoria della illusione finanziaria*, Milano, ISEDI, 1978; compare J.M. BUCHANAN, “*La Scienza delle Finanze*”: *The Italian Tradition in Fiscal Theory*, in “Fiscal Theory and Political Economy”, Chapel Hill, The University of North Carolina Press, 1960, pp. 24-75; J.M. BUCHANAN, *Economic Policy, Free Institutions and Democratic Process*, in “*Il Politico*”, n. 2, 1960, pp. 265-277 (on pp. 274-275).

<sup>48</sup> See J.M. BUCHANAN, *Public Principles of Public Debt*, Homewood, Richard D. Irwin, Inc., 1958.

<sup>49</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 193-199.

individuals to judge the *total* utility of the social process over time. Only the kind of unanimity attainable in constitutional decision-making will insure that the total process (and not merely the final outcome) is genuinely Pareto-optimal<sup>50</sup>. Ultimately, one may apply to the *Calculus* Roger Congleton's observation on the relation between Buchanan's constitutional political economy and Coase's transaction costs economics: "Buchanan's approach can be said to be similar to that of Coase [...] insofar as bargaining and contracts are central to it, but it is ardently "non-Coasian," insofar as the rules of the game matter and always do in the Buchanan universe" (or, to reiterate the *caveat* expressed above, it is "non-Coasian" if one interprets Coase in Stigler's sense)<sup>51</sup>. In this context, the normative role of the political economist is to point individuals in the direction of constitutional reform that allows for the internalization of potential gains from trade<sup>52</sup>.

<sup>50</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 193-194, 199; 189. However, Buchanan and Tullock's contractarianism is still "marginalist" in that it offers a criterion for social reform based on prospective gains from trade (alternative sets of institutions on the Pareto frontier) without the need for a backward-looking assessment of the legitimacy of all *past* social changes. See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 320-321.

<sup>51</sup> R.D. CONGLETON, *The contractarian constitutional political economy of James Buchanan*, in "Constitutional Political Economy", vol. 25, 2014, pp. 39-67 (on pp. 62-63). Congleton's observation is a comment on a later article by Buchanan about the political applications of Coase's theory, J.M. BUCHANAN, *The Coase Theorem and the Theory of the State*, in "Natural Resources Journal", vol. 13, n. 4, 1973, pp. 579-594, in which he initially argues for a subjectivist reading of the zero-transaction costs clause, implying that constitutional rules are irrelevant with respect to the efficiency of subsequent bargaining. This idea has been criticized, since it seems to ignore the real economic impact of transaction costs and the importance of a correct rule design; see B. HSIUNG, *Reconciling Buchanan and Coase on the Coase Theorem*, in "Journal of Institutional and Theoretical Economics (JITE)", n. 2, 2003, pp. 392-413, who however concludes, as I did above, that Buchanan and Coase share a common concern for institutional efficiency. Moreover, it has been argued that the *Calculus* sidesteps the problem of the asymmetric distribution of transaction costs in political groups, a fact that is reflected in bargaining power differentials; constitutional unanimity assumes only an all-encompassing zero-cost group; see R.G. HOLCOMBE, *The Coase Theorem, Applied to Markets and Government*, in "The Independent Review", n. 2, 2018, pp. 249-266 (on pp. 257-258). Congleton however notices that in the conclusion of the paper, Buchanan recognizes the importance of different institutional constraints on economic performance. My argument is that the *Calculus'* emphasis on the long-term political process is exactly based on an assessment of the *virtues and limits* of Coasian bargaining.

<sup>52</sup> See J.M. BUCHANAN, *Positive Economics, Welfare Economics, and Political Economy*, in "The Journal of Law and Economics", vol. 2, 1959, pp. 124-138.

### 3. *Expanding the legacy of the Calculus: social evolution and political realism*

The reconstruction of constitutional choice in the *Calculus* undertaken in the previous paragraphs emphasizes its specificity against other contractarian paradigms: Buchanan and Tullock's intention was to balance the abstract character of the two-stage model of social choice with economic realism and the gains-from-trade approach. Coase's theory provided the necessary concepts to do so but failed to capture the problem of long-run constitutional stability. Hence the need for the veil of uncertainty.

Nonetheless, difficulties remain. For one, the origin of property rights is left unexamined. Buchanan and Tullock start from a point of "minimal collectivization", whereby private property and freedom of contract are unanimously accepted. This, however, generates an infinite regress concerning the legitimacy of the initial collective agreement<sup>53</sup>. In *The Limits of Liberty*, Buchanan partially resolves this issue by recasting Hobbes' state of nature in economic terms. Conflict persists until a relatively stable distribution of resources emerges from "defense-predation" dynamics. From this baseline, bargaining over cooperation begins, potentially including redistribution and eventually yielding a set of property rights and enforcement mechanisms—the "protective state"<sup>54</sup>.

A second problem concerns the veil of uncertainty. Why should individuals forego immediate claims in favor of long-term collective benefits? Although uncertainty exists in real political settings, strict rational choice theory struggles to explain such behavior. This issue becomes even more pressing when the Hobbesian context is introduced, since the latter is characterized by bold strategic interaction rather than risk aversion<sup>55</sup>.

Among the possible solutions to these questions, two stand out as consistent, yet alternative, developments of the politics-as-exchange perspective. The first relaxes the constraints of rational choice theory and interprets social norms as reciprocity equilibria in repeated games.

<sup>53</sup> J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., p. 47.

<sup>54</sup> J.M. BUCHANAN, *The Limits of Liberty*, Indianapolis, Liberty Fund, 2000, pp. 69-95.

<sup>55</sup> See J.M. BUCHANAN, G. TULLOCK, *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, cit., pp. 80-81, where the problem is assumed away; see A. DE JASAY, *Social Contract, Free Ride*, Oxford, Clarendon Press, 1989, pp. 105-109 for a critique that highlights how sectional payoff may be pursued also in constitutional bargaining.

The second adopts a neoinstitutionalist approach, showing how rent-seeking interaction between interest groups can evolve to support the institutions of an open society.

As philosopher Gerald Gaus observes, Buchanan's Hobbesian contractarianism begins from an "unruly condition" of strategic conflict and bargaining and seeks to explain the emergence of a full scale political order with enforcement mechanisms. Yet formal institutions require informal moral rules for their long-term stability: enforcement alone is insufficient<sup>56</sup>. Buchanan acknowledged the importance of such a "moral order", but he still tried to give an economic (*viz.* Coasean) explanation of how norms come about—for instance, with a theory of how individuals have an incentive to "preach" to others and reshape their preferences in order to internalize the benefits from cooperation. However, this remains a limited possibility in large-group contexts where reputational mechanisms weaken<sup>57</sup>.

A more robust account of norms combines Buchanan's gains-from-trade framework with Friedrich Hayek's evolutionary theory. Drawing on Hume, Hayek argues that rule-following behavior is largely habitual rather than utility-driven: individuals conform through imitation and convention. Cultural evolution then selects rules that enhance group survival and economic performance, without central design. Individuals thus appear more as "rule-followers" than "maximizers"<sup>58</sup>.

The attempt to merge the theories of Buchanan and Hayek is articulated most systematically in Robert Sugden's *The Economics of Rights, Co-operation, and Welfare* (1986) and *The Community of Advantage* (2018). Sugden uses behavioral and evolutionary game theory to show how norms emerge as equilibrium conventions or "evolutionarily stable strategies"<sup>59</sup>. Coordination often arises without deliberation,

<sup>56</sup> G. GAUS, *It Can't be Rational Choice all the Way Down: Comprehensive Hobbesianism and the Origins of the Moral Order*, in P.J. BOETTKE, S. STEIN (ed.), "Buchanan's Tensions: Reexamining the Political Economy and Philosophy of James M. Buchanan", Arlington, Mercatus Center at George Mason University, 2018, cit., pp.117-145 (117-119).

<sup>57</sup> G. GAUS, *It Can't be Rational Choice all the Way Down*, cit., pp. 125-127; compare with J.M. BUCHANAN, *Moral Community, Moral Order, or Moral Anarchy*, Colorado Springs, Colorado College, 1981; J.M. BUCHANAN, *Ethics and Economic Progress*, Norman, University of Oklahoma, 1994.

<sup>58</sup> See G. GAUS, *It Can't be Rational Choice all the Way Down*, cit., pp. 136-138. F.A. von Hayek, *Law, Legislation and Liberty*, Chicago, The University of Chicago Press, 2021.

<sup>59</sup> See R. SUGDEN, *The Economics of Rights, Co-operation and Welfare*, Basingstoke, Palgrave Macmillan, 2005, pp. 27-35.

through salient focal points or Schelling-like solutions. Once established, conventions persist because they shape expectations; prior possession, for example, becomes a focal allocation rule<sup>60</sup>. Over time, reciprocity itself acquires normative force, as seen in trust and dictator games, where cooperation exceeds standard predictions<sup>61</sup>.

According to Sugden, this approach captures better than classical contractarianism Buchanan and Tullock's intention to ground the justification of a liberal order in individual behavior. Still, this does not prohibit the normative economist from suggesting institutional changes that appeal to a significant intersection of people's interests. In *The Community of Advantage*, he argues that behavioral economics shows preferences to be context-dependent, which strengthens rather than weakens the case for markets: a broader range of options enables richer self-development over time. No external authority can reliably determine individuals' welfare independent of their revealed choices<sup>62</sup>.

Although this perspective deals effectively with the strictures of rational choice theory, it may be seen as overly individualistic and even unpolitical, in that it discounts people's tendency to form coalitions and engage in conflict for the distribution of resources. Hayek himself articulated this dilemma in *The Fatal Conceit*: human history is a continuous struggle between the emergence of tribal or communitarian impulses and the development of open exchange relations. Individuals live in both worlds at once—the small group environment of face-to-face relations and the extended order of the market. Therefore, the main challenge for political theory consists in explaining how an extended order can thrive in synergy with rent-seeking behavior<sup>63</sup>.

A theory that accounts for this problem is provided by Douglass North, John Wallis, and Barry Weingast in *Violence and Social Orders* (2009). They identify the control of violence as the central political problem. Even in contractual settings, power is not eliminated but con-

<sup>60</sup> See R. SUGDEN, *The Economics of Rights*, cit., pp. 95-107.

<sup>61</sup> See R. SUGDEN, *The Community of Advantage: A Behavioural Economist's Defence of the Market*, Oxford, Oxford University Press, 2018, pp. 214-229.

<sup>62</sup> See R. SUGDEN, *The Community of Advantage*, cit., ch. 4-5.

<sup>63</sup> See F.A. VON HAYEK, *The Fatal Conceit: The Errors of Socialism*, London, Routledge, 1988. I've articulated this objection to more extensively in G. BRIONI, *Classical Liberalism and Behavioural Economics: Contemporary Restatements of Contractarianism and Evolutionism*, in "Metabasis", vol. 20, n. 40, 2025, pp. 133-151. The summary of Sugden's re-elaboration of Buchanan is also presented more in depth and compared with the game-theoretic account of Vernon L. Smith.

ditionally managed through trust and enforcement<sup>64</sup>. Furthermore, the question of order is something that involves groups more than isolated individuals—although individual beliefs and choices matter for the continued existence of groups. Order depends on coalitions rather than isolated individuals, since only organized groups can sustain control over resources and coercion. Their framework thus aligns more with political realism, while remaining rooted in economic analysis<sup>65</sup>.

However, their theory aims to surpass the simplistic account of the origin of the modern state based on a transition between a “roving bandit” and “stationary bandit” government form, where the first is a purely extractive organization and the second is a stable “revenue-maximizing” mechanism<sup>66</sup>. The authors argue that changes should be assessed at the level of the infra-elite network. At any given moment, multiple groups compete for rents and social privileges, seeking to control access with conflict and strategic bargaining. Negotiation among components of the dominant coalition determines the contours of the political order.

The authors distinguish between “natural states” and “open access orders”. In natural states “elites [...] agree to respect each other’s privileges, including property rights and access to resources and activities. Thus, they “create credible incentives to cooperate rather than fight among themselves”<sup>67</sup>. The mutual expectation that elites aim at rent extraction works as an incentive-stabilizer. In natural states, changes in the dominant coalition are mostly governed by economic and political shocks, and state forms can be classified based on the adaptive efficiency of their internal elite structure<sup>68</sup>.

“Fragile” natural states feature personalistic “patron-client net-

<sup>64</sup> See D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, Cambridge, Cambridge University Press, 2009, p. 13; compare W.J. SAMUELS, *Anarchism and the Theory of Power*, in E. STRINGHAM (ed.), *Anarchy, State and Public Choice*, Cheltenham, Edward Elgar, 2005, pp. 153-177.

<sup>65</sup> See R. JUBB, *Unjust Authority*, Oxford, Oxford University Press, 2024, where *Violence and Social Orders* is employed to support a realist theory of legitimacy.

<sup>66</sup> Compare D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, cit., p. 17; M. OLSON, *Power and Prosperity*, cit.; G. BRENNAN, J.M. BUCHANAN, *The Power to Tax*, Indianapolis, Liberty Fund, 2000.

<sup>67</sup> D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, cit., p. 18.

<sup>68</sup> See D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, cit., p. 42.

works”, and are therefore the most vulnerable to violent overthrows. Resources are devoted to keeping the power equilibrium within the proximate coalition. In contrast, “basic” and “mature” states exhibit increasing institutionalization. This is a form of risk-management: the more the law is based on public and codified procedures rather than on personal commands, the less members of the coalition will have an *existential* stake in the fate of the organization. Government thus approximates the status of a “perpetually lived organization”, where the identity of the organization is independent from the identity of its individual members”<sup>69</sup>. Rents are still the prerogative of the dominant coalition but its credible commitment to order creates space for new organizations within the legal scope of the state.

These features are maximized in open access orders. In this context, “all citizens have the ability to form organizations, to write contracts, to use the courts and the bureaucracy, and to access public goods and services”<sup>70</sup>. Social interactions are governed by the rule of law, and organizations can compete for government through the institutions of parliamentary democracy. Correspondingly, market institutions regulate the competition for economic resources. The transition between natural states and open access orders is not wholly intentional; it’s rather the outcome of a piecemeal de-personalization of government undertaken to consolidate the power balance in the dominant coalition. Features such as the Weberian monopoly of force, which are necessary for a general application of the rule of law, are also consistent with the incentives of the elite<sup>71</sup>. This is also a central point in Roger Congleton’s *Perfecting Parliament* (2011), which focuses more on the causes and gradual emergence of parliamentary regimes: democratization is the product of strategic bargaining aimed at stability, more than of revolutionary rupture<sup>72</sup>.

A crucial element in this framework is that rent seeking does not disappear in open access orders; it is universal. The difference is that rents

<sup>69</sup> D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, cit., pp. 41-49, 23.

<sup>70</sup> D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, cit., p. 112.

<sup>71</sup> See D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, cit., p. 150.

<sup>72</sup> See R. CONGLETON, *Perfecting Parliament: Constitutional Reform, Liberalism, and the Rise of Western Democracy*, Cambridge, Cambridge University Press, 2011.

become contestable through open competition. When regulatory capture persists, societies risk inefficiency. However, countervailing pressures typically emerge to restore balance<sup>73</sup>. The contestability of social positions, organized through procedures and the distribution of political power, minimizes the social waste of resources caused by conflict<sup>74</sup>.

The theory of collective action developed by North, Wallis and Weingast and by Congleton establishes a new synthesis between realism and politics as exchange. The gains from trade approach does not require abstract individualism, nor an identity of interests between players. Stable, yet dynamic, liberal institutions can emerge from the interaction of rent-seeking elites if the features of the former align with the incentives of the latter. Moreover, open access orders do not thrive *in spite* of rent-seeking behavior, but *in synergy* with it.

### *Conclusions*

In this paper, I argued that the most important contribution of *The Calculus of Consent* is its mutual advantage theory of politics. Buchanan and Tullock adopt a realist premise: conflict of interest, understood as externality, is a fundamental feature of social life, and harmony cannot be assumed. Yet they remain optimistic that individuals can recognize gains from cooperation under appropriately structured institutions.

However, Buchanan and Tullock's contractarianism is not frictionless. Their theory preserves the dynamism of the bargaining process by the adoption of Coasian concepts but it is forced into a stronger abstraction when devising comprehensive rules of collective action with the veil-of-uncertainty argument. Buchanan went in the right direction when he supplemented the *Calculus* with a Hobbesian framework in *The Limits of Liberty*. However, I suggested that his solution is limited by the strict adherence to rational choice and by an overly abstract individualism. Such shortcomings can be corrected respectively by introducing evolutionary and realist elements into the philosophy of the *Calculus*, without betraying its exchange-centric spirit. In this range of

<sup>73</sup> See D.C. NORTH, J.J. WALLIS, B.R. WEINGAST, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, cit., pp. 140-142.

<sup>74</sup> See R. CONGLETON, *Perfecting Parliament: Constitutional Reform, Liberalism, and the Rise of Western Democracy*, cit., pp. 99-102.

options, the perspective that merges elite theory and rent seeking with contractarianism seems more successful in capturing the combination of conflict and bargaining underlying open societies.

Buchanan's Nobel Prize certainly contributed to the intellectual reputation and success of a research program that mobilizes economics, moral philosophy, and political theory with the aim to study the foundations of order in cooperation and exchange<sup>75</sup>. The theoretical intention behind this program is shared by a group of like-minded Nobel laureates, such as Coase, Hayek, and North, who collectively follow in the footsteps of the Scottish fathers of classical political economy, that is, David Hume and Adam Smith<sup>76</sup>. The contributions I discussed in the last section of the paper can also illustrate the internal vitality of the exchange paradigm, whose categories can be reinterpreted to achieve a different balance between the explanatory and normative dimensions when confronted with behavioral or historical evidence.

**Riassunto** - L'articolo offre una retrospettiva su *The Calculus of Consent*, di James Buchanan e Gordon Tullock, a quarant'anni dal conferimento del Nobel per l'economia a Buchanan. L'analisi si concentra sul paradigma della politica come scambio, proponendone un'interpretazione fondata sul rapporto con la teoria giuridico-economica di Ronald H. Coase. Si sostiene che la visione del momento costituente elaborata da Buchanan e Tullock unisca due modelli teorici: quello coasiano del contratto come soluzione alle

esternalità e quello rawlsiano del velo d'ignoranza. Se il primo cattura il dinamismo delle relazioni di scambio come simbolo di efficienza paretiana, il secondo si riferisce all'utilità "totale" delle scelte collettive sul lungo termine. Tuttavia, rimangono irrisolte questioni come la determinazione originaria dei diritti di proprietà. L'ultima sezione si sofferma su contributi recenti che si inseriscono nel solco di Buchanan e Tullock, ma ne integrano l'analisi con elementi di evolucionismo e realismo politico.

<sup>75</sup> See K. HORN, *James M. Buchanan – Doing away with discrimination and domination*, in "Journal of Economic Behavior & Organization", vol. 80, n. 2, 2011, pp. 358-366.

<sup>76</sup> See P.J. BOETTKE, S. HAEFFELE-BALCH, V.H. STORR (eds.), *Mainline Economics: Six Nobel Lectures in the Tradition of Adam Smith*, Arlington, Mercatus Center at George Mason University, 2016 (Elinor Ostrom and Vernon L. Smith are also part of this group).