

THE *CALCULUS OF CONSENT* AND THE CONSTITUTION OF CAPITALISM

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Introduction

The functioning of a market economic order, or capitalism, is not discussed in *The Calculus of Consent*. The purpose of the public choice classic by Buchanan and Tullock was to examine the democratic political process from the analytical perspective of the modern economist.¹ The success of the *Calculus* in achieving this stated purpose is beyond question. We now have 25 years of impressive intellectual effort that builds on and attests to the success of the *Calculus* in opening avenues of insight into the political process. But in achieving this success, the *Calculus* also opened a field of research that significantly expands our understanding of the market order.

Every economy is a political economy and it is impossible to understand an economic system without taking into consideration the political environment within which that system operates. This is obvious in the case of a socialist, or centrally planned, economy where the distinction between economic and political decisions is blurred in the extreme. It is much easier to overlook the mutual interaction between economics and politics in the case of a market economic order where economic decisions are less directly influenced by political decisions. But the connections between politics and the market economy are no less important by virtue of being more subtle.

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¹The closest Buchanan and Tullock get to discussing the market in the *Calculus* is when they state, "the market order is founded on the empirical reality that not *all* men renounce self-interest, and that, because of this, the pursuit of private gain should be put to social use where this is possible." Their next sentence, however, is, "The question that we have posed in this work concerns the possibility of extending a similar approach to political organization" (1962, p. 304).

Protecting Capitalism from Government

The distinguishing characteristic of any political process is coercive power while the distinguishing characteristic of the market process is voluntary exchange. By definition, coercion trumps voluntary action, and therefore the crucial political ingredient into the viability of a market order is restraint. As the analysis in the *Calculus* makes clear, strong and persistent tendencies in a democracy oppose government restraint. According to Buchanan and Tullock (1962, p. 287), this opposition comes from organized pressure groups

because differential advantages are expected to be secured through the political process, and, in turn, differential advantages for particular groups are produced because of the existence of organized activity. A spiral effect comes into play here, the results of which may be observed in the federal income tax structure, federal tariff legislation, federal resource-development projects, and many other important areas of economic legislation in particular.

Such special interest political influence can undermine the market economy by allowing these interests to circumvent the discipline imposed by private property and voluntary exchange.

Much of the analysis in the *Calculus* explains why it is that government, which, in a market economy, has the responsibility for protecting private property rights, is so prone to violate those rights. The benefits generated by respect for private property are general benefits in the same sense as the benefits provided by public goods. Once the benefits are provided by the contributions of some they are equally available for the consumption of all. The temptation facing each individual is to reap the benefits and avoid the contribution. This is precisely the temptation of the individual who enjoys the general benefits of a productive market economy while using political influence to realize differential benefits by violating the property rights of others.

It is easy to get the impression from the discussion to this point that the characterization of political activity given by the *Calculus* is primarily negative. This impression would be wrong. The very harm that is imposed on society when people undermine the market process through predatory behavior reflects the good that is conveyed on society by a government whose role is largely limited to restraining predatory behavior. When subject to appropriate "rules of the game" the *Calculus* portrays government as the means of controlling predation and engaging in "complex exchange" that expands the opportunity of all.

A fundamental contribution of the *Calculus* was to distinguish between decisions made within the political rules of the game and decisions made on those rules, or constitutional decisions. The same self-interest that motivates political activity aimed at negative-sum predation within the rules will motivate the design of rules that minimize this predation and promote the general welfare. The *Calculus* not only discusses the desirable characteristics of a constitution, it also explains why self-interest is difficult to distinguish from the public interest at the level of constitutional design, and therefore why desirable constitutional design is possible. As Buchanan and Tullock note (pp. 94–95):

The constitutional choice of a rule is taken independently of any single specific decision or set of decisions and is quite rationally based on a long-term view embodying many separate time sequences and many separate collective acts disposing of economic resources. . . . The self-interest of the individual participant at this level leads him to take a position as a “representative” or “randomly distributed” participant in the succession of collective choices anticipated. Therefore, he may tend to act, from self-interest, as if he were choosing the best set of rules for the social group.

A constitution that imposes rules on the political process that make it responsive to the all-inclusive social group is indispensable to a capitalist economic order. It is entirely justified, at least in the mind of this author, to go one step further and argue that a constitution that creates a political process promoting the general interest will also promote a capitalistic order. Promoting the general interest requires allowing each individual the freedom to pursue his or her objectives in a setting that provides the information and motivation to do so in a way that expands the opportunity of all others to do the same. It is only through the market exchanges of private property under a capitalist order that people are able to advance their diverse interests in cooperative interaction with one another. No other economic order comes close to capitalism in fostering social harmony and widespread prosperity, that is, in promoting the general interest.

There are those who believe that creating a political order conducive to capitalism is not only what those who drafted the U.S. Constitution did, but that it is also what they intended. For example, Bernard Siegan (1982, p. 126) has stated, “The Framers of the original document [the U.S. Constitution] *sought* to create a society allowing free commerce in which the marketplace of goods and services was the ultimate economic authority” (emphasis added). This is not a belief, however, shared by all admirers of both the Framers and capitalism. According to Forrest McDonald (1982, p. 49): “If one

were to take a poll of American historians and ask what sort of economic system was contemplated by the framers of the Constitution, the most common answer would doubtless be capitalism. That answer is inaccurate.”

It is not my intention here to take sides in an argument over what the Framers’ intentions were with respect to capitalism. Rather, the argument here is that the fate of capitalism in the United States depended little, if any on the Framers’ original intent toward capitalism. One can make an argument, as does Siegan (1982, pp. 106–7), that the preservation of constitutional government requires at a minimum “that a consensus exists among jurists and constitutional scholars that the intentions of constitutional framing bodies should be strictly observed when to do so would be advantageous or not harmful for modern society.” But even if it were clear that the Framers intended to establish an economic order based on capitalism, the consensus Siegan discusses would offer little protection to that order under the view of government that prevails today.

Given the prevailing view that discretionary government power, widely exercised, is the primary source of social progress, almost any restriction imposed by the Constitution is seen as “harmful for modern society.” Most people advocating constitutional reform today identify more with Pulitzer Prize historian James MacGregor Burns and those associated with the Committee on the Constitutional System than with Nobel laureate James Buchanan. The former seek to expand government while Buchanan seeks constitutional reform as a means of limiting government. However, accepting the majority view that we should unchain government so that it can get on with doing good renders the intentions of the Founders largely immaterial, even under Siegan’s consensus.

It is simply not all that important what the Framers intended with regard to capitalism. Far more important were their intentions with regard to limiting government power. While the Framers recognized the importance of a government with sufficient power to perform a few basic tasks, they also had a profound mistrust of that power. It was their intention to make it sufficiently difficult to activate the power of government that it would be almost impossible for special interest coalitions (“factions” in Madison’s words) to infringe on the rights of minorities.² Unless we can somehow recapture the wisdom

²The Federalist papers are full of quotes that clearly reflect the intention of Madison and Hamilton to restrain the power of government. The obstacles of government action built into the decision-making machinery of the federal government is an obvious reflection of the Framers’ mistrust of government power. Also indicative is the fact that during the constitutional convention the Framers considered and rejected granting the

of the Framers, as reflected in their distrust of discretionary government power, and reimpose genuine constraints on government, capitalism will be undermined even if the Framers did intend to foster it. On the other hand, if we once again restore effective constraints on government, capitalism will thrive even if the Framers did not intend to foster it.

Capitalism is a rather hardy organism in that it will flourish when left largely alone. It does not have to be applauded, appreciated, or given tender loving care to work its wonders. As McDonald (1987, pp. 1–2) points out, “the weight of law, tradition, philosophical values, and—especially after 1776—ideology was such as to make the emergence of a liberal regime seem almost impossible.” Yet the fact is that a liberal regime of capitalism not only emerged, but within a few decades transformed the United States into the most prosperous country on earth. And the primary ingredient that went into this transformation was a stable, but limited, government that engaged in a minimal amount of meddling in the details of economic decisionmaking.

Capitalism is hardy, but not indestructible. The heavy hand of government can eventually squeeze the life out of a vibrant market order. Capitalism cannot survive in an environment in which political decisions constantly override individual economic decisionmaking. We would be better served if our current crop of politicians was less involved in “promoting” capitalism and more involved in limiting the scope of government. Invariably, when a politician sets out to advance the cause of capitalism, the result is another monkey wrench thrown into the market process. Has there ever been a piece of special interest legislation enacted that was not justified, at least in part, as a means of promoting capitalism? Bailing out Chrysler keeps capitalism strong at home, as do a host of tariffs and trade restrictions. Farm programs insure the survival of the backbone of competitive capitalism: the family farmer. Social welfare programs protect capitalism against its own excesses, as does a host of business regulations. Controls on the price and allocation of energy prevent our capitalistic system from being crippled by dependence on foreign petroleum. And the list goes on.

federal government the power to grant charters of incorporation; to establish seminaries for promotion of the arts; to establish institutions for the promotion of agriculture, commerce, trades, and manufactures; to regulate stages on the post roads; to establish a university; and to make sumptuary laws. And the list could be extended (see Seigan 1982, p. 113).

Conclusion

Without discussing capitalism, Buchanan and Tullock provided us with a profound understanding of the constitutional prerequisite for a political process consistent with a viable capitalistic order. Without necessarily intending capitalism, the Framers brought forth a constitution that satisfied these prerequisites. As Buchanan (1987, p. 309) has said regarding the analysis in the *Calculus*: "The construction seemed to offer justificatory argument for something akin to the complex political structure that James Madison had in mind, much of which finds itself embedded in the constitutional framework approved by the Founding Fathers."

The economic success of capitalism in the United States cannot be separated from the political success of the U.S. Constitution. Our economy is a political economy and has to be understood as such. This understanding has been greatly advanced by the *Calculus* and the scholarship of Buchanan and Tullock.

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