

The Calculus of Consent at 50: Insights for Liberalism[#]

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Abstract. This year sees the 50th anniversary of the publication of *The Calculus of Consent*, the monumental work by James Buchanan and Gordon Tullock providing logical foundations of constitutional democracy. Its main aim is scientific, but I claim that it also provides insights that can inspire and renew liberalism. The purpose of this paper is to clarify in what way it can do so in five areas: constitutionalism, generality, robust political economy, Paretian constructivism and normative fundamentals. In all, the book can be taken to imply a "liberalism without foundations", which nevertheless entails institutional foundations (of a particular kind) for the political game.

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1. Introduction

In 1962, James Buchanan and Gordon Tullock had a book published. Its title was *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Buchanan and Tullock 1962; henceforth denoted *Calculus*). It has become a modern classic, as a founding work for the research fields of public choice and constitutional economics. Its novel analytical approach to politics, in essence making creative use of the tools of economics for this purpose, certainly made a scientific contribution – which is why the book was cited prominently by the Prize Committee when Buchanan was awarded the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel (The Royal Swedish Academy of Sciences 1986).¹

However, it will be argued here that the significance of the work goes beyond the strictly scientific contributions. My claim is that it, in addition, is of great relevance for liberalism.² In this paper, I plan to delineate what I think liberalism can and should learn from *Calculus*. I will dwell on five areas: constitutionalism, generality, robust political economy, Paretian constructivism and normative fundamentals. These areas are of quite different kinds: some present a certain normative perspective; some concern the role and design of institutions; some deal with the attitudes of the analysts of social affairs; and yet some contain insights for how to conduct and use social science. All of these aspects are of importance to liberalism.

It bears noting what this piece is *not*. It is not an exercise in “literalism”: my relationship to *Calculus* is not that of a fundamentalist to a holy scripture. This implies, on the one hand, that I will not hesitate to add critical commentary along the way when I think such commentary is needed; and it implies, on the other hand, that I will, in varying degrees, use *Calculus*, not as the final word on the various topics raised, but as a starting point, sometimes with an ensuing reinterpretation. Furthermore, this piece is not a treatise, which means that I do not attempt to derive or present a complete and systematic “*Calculus* liberalism”.³ It is, simply, a list of diverse thoughts on how this work can stimulate a development of liberalism. For those who adhere to or strive to achieve a “closed” liberalism, which is perceived to be complete and not in need of renewal, this is of little interest, I would think. For others, it might offer some useful thoughts.⁴

What do I mean by “liberalism”? As there is a multitude of forms of liberalism, the most sensible strategy for arriving at some kind of general description is, I believe, to try to delineate what all these forms have in common. Gaus and Courtland (2011) propose a “fundamental liberal principle”:

¹ For a personal statement of the book’s Swedish connections, from Knut Wicksell up until today, see Berggren (2012a).

² This is not to say that liberalism features explicitly in the book: in fact, the term “liberal” only occurs five times and “liberalism” only once in it (and in no case is the term used to describe the message of the book).

³ In a way, this approach is consistent with that outlined in the preface of *Calculus* (p. vi): “We are not attempting to write an ‘ideal’ political constitution for society. Therefore, the reader will find in this book little more than passing reference to many of those issues that have been considered to be among the most important in modern political theory.”

⁴ It is, I gather, clear by now that I primarily direct my argumentation to liberals, although I do not rule out that *Calculus* might inspire readers of other ideological persuasions as well.

[F]reedom is normatively basic, and so the onus of justification is on those who would limit freedom, especially through coercive means.⁵

That is to say, all kinds of liberalism value freedom highly. Some kinds value it absolutely, such that nothing can constitute sufficient reason to deviate from it, but in most cases there is a presumption of freedom: freedom is *prima facie* the most important value (“normatively basic”).⁶ One way for the exercise of this paper to be relevant to liberals is to say that most of the issues that will be presented in one way or other relate to freedom. However, since the concept of freedom itself is multifaceted, I also think it worthwhile to consider what Gray (1995, p. xii) regards as features of all types of liberalism:

Common to all variants of the liberal tradition is a definite conception, distinctively modern in character, of man and society. What are the elements of this conception? It is *individualist*, in that it asserts the moral primacy of the person against the claims of any social collectivity; *egalitarian*, inasmuch as it confers on all men the same moral status and denies the relevance to legal or political order of differences in moral worth among human beings; *universalist*, affirming the moral unity of the human species and according a secondary importance to specific historic associations and cultural forms; and *meliorist* in its affirmation of the corrigibility and improvability of all social institutions and political arrangements. It is this conception of man and society which gives liberalism a definite identity which transcends its vast internal variety and complexity.

I think it will be clear, from the following section, how the *Calculus* enterprise, broadly conceived, fits nicely into this characterization of liberalism. In essence, then, it is primarily to people who regard freedom as normatively basic or who subscribe to individualism, egalitarianism, universalism and meliorism that I direct my analysis.

That being said, it may still be thought strange to relate, as strongly as I do, a work in social science to a political ideology, liberalism. The former is, supposedly, a positivist endeavor, aiming to understand the world as it is, while the latter is a normative one, aiming to make (certain features of) the world conform to certain values.⁷ However, I would like to argue that there is a “logical” connection in the present case. Social science tends to work with hypothetical imperatives, or with means-end analysis. *Calculus* makes explicit use of certain ends and takes those as given for the ensuing analysis of means.⁸ For example, the first sentence of the preface (p. v) reads:

This is a book about the political organization of a society of *free men*. (De-emphasis and emphasis added.)

⁵ Admittedly, the concept of coercion is not easily defined, and its relation to liberalism, although being central, is also complex. For one, few liberals reject all kinds of coercion, and moreover, it remains a contested issue to what extent coercion can follow from social pressure and the like, in addition to being the result of certain formal institutions. For a discussion, see Anderson (2011).

⁶ See Klein (2011) for an extended argument relating this kind of position to Adam Smith and F. A. Hayek.

⁷ The normative-positive distinction has been made historically by, e.g., Niccolò Machiavelli, David Hume and John Neville Keynes and was stressed by Friedman (1953). As Vanberg (2012) clarifies, inspired by Hans Albert, there are elements in any scientific endeavor which are normative: but at one level of analysis, value-free, positive science is still possible.

⁸ See Vanberg (2012) for a clarification of in what sense *Calculus* is an exercise in positive and normative analysis, respectively and Kliemt (2011, p. 279) on how the use of hypothetical imperatives relates to moral skepticism.

The authors also write (p. 303):

The acceptance of the right of the individual to do as he desires so long as his action does not infringe on the freedom of other individuals to do likewise must be a characteristic trait in any “good” society.

I take this to imply that freedom is a basic starting point of the analysis: it, properly interpreted, is presumed to be the end which the means (i.e., the ways in which constitutional democracy is set up) are to serve.⁹ Buchanan (1992, p. 98) comments on the normative character of *Calculus*:

Furthermore, and importantly, these two stands of inquiry [the emphasis on the rules within which choices are made, and the economists’ model of the behavior of political agents] were imbedded in a normative framework that confused and irritated our critics. The book was as much political philosophy as it was either economics or political science, and we did not, then or now, deny or even apologize for its location within the Madisonian vision of the American experience.

The “properly interpreted” part of the sentence above refers to the *Calculus* construct of first and foremost starting from a situation of freedom at the constitutional level of decision-making; it is freedom *in and through constitutional contract*, as will become clear in Section 2.1. As Vanberg (2011, p. 9) puts it:

[T]his ideal of individual liberty is about *individual sovereignty in defining the rules* under which a group of persons chooses to live, rules that among free and equal individuals can only be chosen by voluntary agreement.

In a similar manner, ideologies also tend to feature both ends and means, or values and facts, where the former are normative and a-scientific and where the latter are scientifically based.¹⁰ The main difference is that in a pure work of social science, ends are not affirmed in a definitive way, whereas an ideology is *defined* in terms of the values it affirms. To summarize, social science oftentimes incorporates values, as postulates for a positive analysis, and ideologies incorporate facts, to guide its adherents in deciding what political positions to form *given* their values. Having a goal is one thing; knowing how to best achieve it is another, no less important. *Calculus* can contribute in this regard, and a liberalism that wishes to avoid petrification should pay close attention.¹¹

⁹ One could keep the analytical apparatus and see what other ends imply: in this sense the positive elements of the study are valid even if one does not opt for freedom. The inability to separate the normative and the positive may explain the critical mindset of some, perhaps especially within political science, towards *Calculus*: see Mitchell (1989).

¹⁰ See Buchanan and Vanberg (1989) and Berggren (2004) for more on the joint but distinct roles of values and facts in forming political opinions.

¹¹ Buchanan (2005, p. 53) writes: “Science and self-interest, especially as combined, do indeed lend force to any argument. But a vision of an ideal, over and beyond science and self-interest, is necessary, and those who profess membership in the club of classical liberals have failed, singularly, in their neglect of this requirement.” I am afraid that this paper belongs to the former camp, which stresses the importance of social science for a vibrant liberalism. This is not to say that an ideal, a vision or a “soul”, as Buchanan calls it, is not needed as well, but those in search of such delights must look elsewhere.

2. Five Areas of Inspiration for Liberalism

In this section I will present five areas in which I think *Calculus* has the potential to inspire liberalism (to the extent that it has not already done so).¹² One could write extensively on each area; eschewing any ambition for systematic completeness, I focus on select aspects that I consider important. I begin by reiterating some main points from *Calculus* for each area, after which I present what I take it to imply for liberalism.¹³

2.1. Constitutionalism

The most central message of *Calculus* is that institutions matter for what collective decisions will be taken and that individuals will therefore want a decisive say in how they are designed in order to make sure that these decisions are in accordance with their preferences to the largest possible extent.¹⁴ The approach is to start from a few basic assumptions – methodological individualism and rationality, in particular – and to ask what individuals would do if they were in a stateless society and wished to introduce a state for handling certain collective affairs. They would then want to establish certain rules – which taken together can be called constitutions – through which they could make collective choices and constrain those given power through the state. The aim is to secure net benefits from this move into government land, and to the extent that each individual who participates in the “constitutional calculus” thinks that such benefits are forthcoming, agreement as to the establishment of the rules can be expected.

What *Calculus* specifically makes clear is that political decision-making takes place on two distinct and separate levels. Buchanan (2003, pp. 14–15) summarizes this analytical approach:

The central contribution of this book [*Calculus*] was to identify a two-level structure of collective decision-making. We distinguished between “ordinary politics,” consisting of decisions made in legislative assemblies, and “constitutional politics”, consisting of decisions made about the rules for ordinary politics. ... We were not, of course, inventing this distinction. Both in legal theory and in practice, constitutional law had long been distinguished from statute law. What we did was to bring this distinction into economic analysis. Doing so allowed us to answer the questions posed previously: From the perspective of both justice and efficiency, majority rule may safely be allowed to operate in the realm of ordinary politics provided that there is generalized consensus on the constitution, or on the rules that define and limit what

¹² I seem to presume that liberalism *needs* inspiration. Does it? Yes: in my view, a political ideology is never complete or perfect, wherefore it constantly needs to reassess old approaches and curiously see if new (or 50-year-old) approaches offer improvements. One may relate this to the value of individuality, as proposed by Mill (1879, ch. 3), where the courage to try new thoughts and approaches to life is regarded as important for social progress. Not least, I consider it important for liberalism to be open to developments in social science.

¹³ Since what is presented here does not constitute a complete liberal system, it should be possible for liberals of all kinds to seriously consider how to incorporate the independent proposals into their (hopefully not entirely complete and rigid) liberal systems. One can reject certain proposals and still find others appealing to boot.

¹⁴ By “institutions” is meant, following North (1990, p. 3), “the rules of the game in a society or, more formally, ... the humanly devised constraints that shape human interaction.” Such rules can be of many different kinds, e.g., economic, political and legal, and they can matter in many different ways. For an elaborate argument as to the importance of institutions and institutional analysis, see Brennan and Buchanan (1985).

can be done through ordinary politics. It is in arriving at this constitutional framework where Wicksell's idea of requiring unanimity – or at least super majorities – may be practically incorporated.¹⁵

If one is concerned about “ordinary politics,” it thus seems a serious oversight to not be at least as concerned about “constitutional politics.” Not because constitutional politics has a value of its own divorced from the value of political outcomes, but because constitutions affect what kinds of political decisions that are made and, thereby, political outcomes.¹⁶ Buchanan (1987a, p. 247) goes as far as to argue as follows:

One way of stating the difference between the Wicksellian approach and that which is still orthodoxy in normative economics is to say that the *constitution* of policy rather than policy itself becomes the relevant object for reform. A simple game analogy illustrates the difference here. The Wicksellian approach concentrates on reform in the rules, which may be in the potential interest of *all* players, as opposed to improvement in strategies of play for particular players within defined or existing rules.¹⁷

To exemplify what kind of rules people would agree to, the authors primarily discuss the basic rule for making collective decisions. The initial premise, thus, is that legitimacy in establishing political institutions derives from (symbolic or conceptual) unanimous consent.¹⁸ However, the outcome of such a basic unanimous decision will not be one in which the decision-making rule for everyday politics requires everyone to agree all of the time. Rather, net benefits will be maximized where the sum of two expected costs are minimized: external costs (the costs associated with having a decision taken that one dislikes) and decision-making costs

¹⁵ This can be compared to how Buchanan (1990, p. 5) describes the difference between ordinary economics and constitutional economics: “In ordinary or orthodox economics ... analysis is concentrated on choices made *within* constraints that are, themselves, imposed exogenously to the person or persons charged with making the choice. The constraints that restrict the set of feasible choice options may be imposed by nature, by history, by a sequence of past choices, by other persons, by laws and institutional arrangements, or even by custom and convention. ... Constitutional economics directs attention to the *choice among constraints*.”

¹⁶ This emphasis on the importance of the rules of politics are not exclusive to constitutional economics: it is also present in German Ordoliberalism: see Vanberg (1988) and Leipold (1990).

¹⁷ Vanberg (2002, p. 497) argues that when evaluating the market economy, one should also focus on the rules rather than on the actions and motives of the actors: “[I]f there is no reason to doubt that the game itself is a desirable game, then it is absurd to morally criticize people for seeking to play the game successfully, as long as they do so within the rules. And, if there are reasons to believe that a better game could be played, then the appropriate response is to seek a change in the rules of the game, not to require the players to disregard their own interests.”

¹⁸ See *Calculus* (ch. 7). In this the authors were inspired by the Swedish economist Knut Wicksell: see *Calculus* (chs. 1 and 6 and Appendix 2) and Wagner (1988). Furthermore, agreement is more probable on constitutional than on other issues, according to the reasoning of *Calculus*, summarized in the following way by Buchanan (1987a, p. 248): “[T]he shift of the Wicksellian criterion to the constitutional stage of choice among rules also serves to facilitate agreement, and, in the limiting case, may remove altogether potential conflicts among separate individual and group interests. To the extent that the individual reckons that a constitutional rule will remain applicable over a long sequence of periods, with many in-period choices to be made, he is necessarily placed behind a partial ‘veil of uncertainty’ concerning the effects of any rule on his own predicted interests. Choice among rules will, therefore, tend to be based on generalizable criteria of fairness, making agreement more likely to occur than when separable interests are more easily identifiable.” Cf. *Calculus* (p. 77 ff.) and Brennan and Buchanan (1985, p. 28 ff.).

(the costs associated with reaching a collective decision, at all). In a group of N people, this will not in general occur at $N/2+1$ or at N but at some intermediate point (*Calculus*, ch. 6).

Important for any evaluation of constitutional alternatives – be it completely new ones or reforms of already-existing ones – is knowledge about their effects. Buchanan and Vanberg (1989) make a distinction between two components of constitutional preferences: an interest component, which consists of values or subjective evaluations of expected outcomes, and a theory component, which consists of predictions about what the outcomes of factual institutional alternatives will be. In order for a constitutional preference to form, then, it does not suffice to have a certain goal (e.g., one consonant with liberalism), but one also needs knowledge about how this goal can (best) be met.

This directly relates to the development of the research fields of institutional and constitutional economics since the publication of *Calculus*.¹⁹ They have become quite empirical in character; several studies try to document how various economic, legal and political institutions affect various outcomes, especially economic growth. One of the clearest results is that protection of private property rights is most important for growth and development to occur.²⁰ As for political institutions, or constitutions, there is less consensus in the literature about their economic effects.²¹

To exemplify, let me briefly mention three such institutions: type of electoral system, type of government and type of legislature. The most important work in the field is Persson and Tabellini (2003): among other things they find that the electoral system matters: majoritarian systems have a smaller size of government (central government expenditures as a share of GDP), a smaller welfare state (social expenditures as a share of GDP) and a lower budget deficit (as a share of GDP) compared to systems with proportional representation. They also document effects of whether a political system is presidential or parliamentary and report that the size of government and the size of the welfare state are smaller in presidential regimes. However, not all of these results have turned out to be very robust, as shown by, e.g., Blume et al. (2009) and Dahl (2012). The findings of the type of electoral system do seem to hold up better than those that concern the type of government (presidential or parliamentarian).

Another type of institution that has been studied is bicameralism, where Congleton (2006) reports that political decisions seem to be more in line with the long-run preferences of the median voter in bicameral systems. Bradbury and Crain (2002) find that the stronger the bicameral element of U.S. state legislatures, the smaller the size of government tends to be; the same result in a cross-country setting is obtained by Plümper and Martin (2003).

Bicameralism is an instance of there being a division of power and checks and balances. More generally, there are arguments to the effects that such a more elaborate organization of the political system may bring with it certain advantages, such as reduced influence for interest

¹⁹ This emerging body of knowledge concerns general effects of institutions only, which lends some credence to the point of the previous footnote, that it is very hard for individuals to assess how *they* (in particular) will fare under different institutional regimes.

²⁰ See, e.g., Berggren (2003), Rodrik et al. (2004), Acemoglu et al. (2005), Asoni (2008) and Besley and Ghatak (2010).

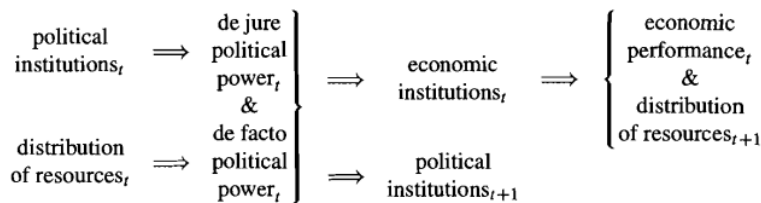
²¹ For a comprehensive survey, see Voigt (2011a); cf. Kurrild-Klitgaard and Berggren (2004).

groups (*Calculus*, pp. 285–286, 300–301, 313–314).²² The empirical results are mixed. Pitlik (2011) finds that there is a positive effect on the scope of liberalization after crises the stronger the constraints on executive political action. Dahl (2012), however, finds that the strength of veto players, which is a way of measuring the degree of checks and balances, is associated with larger government. The latter result could, for example, be explained by logrolling (different veto players collude) or by the inability of a system with large government to undertake reform in the presence of actors that block executive action.

Again, as these examples illustrate, the empirical results are less clear for political than for economic institutions protecting private property, but the research field is still quite young, and as more results accumulate, more clarity will hopefully emerge. The powerful insight of *Calculus*, that constitutions relate to outcomes people value (positively or negatively), certainly seem to hold, although we do not (yet) fully know what the robust relationships are.²³

Before offering some conclusions about how the constitutionalist message of *Calculus* is valuable for liberalism, I would like to point at three possible problems with it.²⁴ First, one theme that is largely missing from the *Calculus* setting is the endogeneity of constitutions.²⁵ By this is essentially meant that it is not only the case that constitutions causally affect other variables; those same variables (and other variables) can causally affect constitutions. This needs to be explored further theoretically and empirically (which is tricky), because the results of such analysis may very well affect insights about how to implement, or not implement, institutional reforms. Unlike *Calculus*, which basically looks at a one-shot situation in which people decide to create certain institutions, Acemoglu et al. (2005) do attempt to model endogeneity, and it constitutes a good start.

Figure 1. The endogeneity of political institutions



Source: Acemoglu et al. (2005, p. 392).

The constitutional game is dynamic and on-going, as illustrated in Figure 1, and is described as follows (p. 392):

²² Cf. Berggren and Karlson (2003), who argue that the quality of decisions can be expected to be higher with a division of power.

²³ As stressed by Dahl (2012, ch. 9), it may be the case that there are no universally valid results in this field that hold irrespective of time and place. Perhaps constitutions are deeply embedded in culture in a way which makes their effects differ in ways unrelated to the formal institutions in place. If so, econometric analysis has its limits and probably needs other methods alongside it, such as historical case studies and narrative analysis.

²⁴ Meadowcroft (2011) likewise presents a number of critiques against this approach.

²⁵ Voigt (2011a,b) identifies endogenization as the most important way in which to extend the constitutional-economics research program at the moment. Buchanan (1999) readily admits that this aspect is missing in *Calculus*.

The two state variables are political institutions and the distribution of resources, and the knowledge of these two variables at time t is sufficient to determine all the other variables in the system. While political institutions determine the distribution of de jure political power in society, the distribution of resources influences the distribution of de facto political power at time t . These two sources of political power, in turn, affect the choice of economic institutions and influence the future evolution of political institutions. Economic institutions determine economic outcomes, including the aggregate growth rate of the economy and the distribution of resources at time $t + 1$. Although economic institutions are the essential factor shaping economic outcomes, they are themselves endogenous and determined by political institutions and distribution of resources in society.

Not only the economic but also the political institutions are subject to change, although the latter are, as a rule, changed less often, and it is a prescient task of future research to try to better understand under what circumstances this type of change occurs.²⁶

Second, from a liberal perspective it may seem problematic to assume, as in *Calculus*, (the formation of) a *unitary* state which is governed by a constitution. This critique gains force from considering liberal models of society such as the utopia of Nozick (1974) and the liberal archipelago of Kukathas (2003) or, for that matter, traditional federalist ways of organizing a state.²⁷ Why, indeed, imagine it desirable to have one set of rules for everyone? If one instead imagines there being a number of jurisdictions in a country between which people can choose, there would presumably be different sets of rules in each. However, the analytical apparatus of *Calculus* can still be applied in an amended manner.²⁸ The constitution for which unanimity can be expected would be something akin to Nozick's meta-utopia: a mere specification of meta-rules that apply to any number of jurisdictions and which give them the freedom to decide their own rules (in all areas that do not concern interjurisdictional issues²⁹). Each jurisdiction then has its own constitution. However, the precise design of these institutions would differ between the jurisdictions in accordance with varying constitutional preferences, according to which people tend to sort themselves (before *and* after the formation of the jurisdictions). Unlike *Calculus*, this constitutional model would not require as strict a veil of uncertainty for consensus to emerge, since people need only agree on the overall framework and not on the precise institutional details, which may vary quite a bit between jurisdictions.³⁰ This expanded model

²⁶ Nevertheless, constitutional change is not extremely rare. Hayo and Voigt (2012) find that in their sample of 202 countries, changes in government occurred in 101, with a total number of changes of 269, most of them small. They find that constitutional changes are related to characteristics of the political system, internal and external political conflicts and political leaders; they did not find that economic factors play a role.

²⁷ While Nozick and Kukathas imagine separate geographical areas with differing sets of institutions, there are also suggestions for how individuals in any given geographical area can associate with different available sets of institutions: see, e.g., Berggren (1996) and Eichenberger and Frey (2006).

²⁸ See Klient (1994) for a suggested reconstruction of the idea of consensus in a process of club formation.

²⁹ As the experience of the United States may be taken to show, a problem here might be that most issues can be framed such that they involve interjurisdictional effects - a practical (and public-choice-based) problem for this model.

³⁰ To the extent that precise institutional details are decided upon at the constitutional stage in this type of model, one could either envisage people self-sorting into jurisdictions, in case people need to agree on these institutions *but only with each other* and not with those self-sorting into other jurisdictions, with different institutions; or people could choose to simply agree on the overall framework and then form institutions in the next stage, when the framework is in place, again according to self-selection; or people could decide on precise institutional details for a

also, more readily, encompasses mechanisms for constitutional change, not least through a process of institutional competition.³¹ In a sense, this facilitates continual consent, as people who dislike a certain institutional setting may simply relocate to another one.³²

Third, the question is to what extent formal institutions explain what is going on in the world, not least with regard to economic development. Do they really matter, as *Calculus* critically presumes, or do they rather just reflect more deep-seated, underlying cultural patterns that are decisive for people's attitudes and behavior and for how formal institutions are designed? For example, McCloskey (2006, 2010) seems to hold that property rights were not as central for the development of the West as many others claim: rather she suggests that bourgeois virtues and certain ethical practices evolved to shape behavior.³³ These can be seen as an instance of informal institutions. Clearly, *Calculus* is in no way inconsistent with informal institutions playing a large role in shaping individual and aggregate behavior, but it is also the case that it does stress the predominant importance of formal institutions. Here, one might point at a potential problem, for why should self-interested and rational actors be supposed to see a need for common rules that are appealing to all? If they try to secure differential favors in ordinary life, why should they not wish to do so when it comes to deciding rules for the political game? Brennan and Buchanan (1985, p. 147) recognize this tension and argue that in constitutional decision-making a *norm* will dominate over self-interest:

Applied to the problem at hand, which is that of deriving some conceptual explanation of why individuals might be expected to seek out, design, argue for, and support changes in the general rules of the sociopolitical order when, by presumption, such behavior would be contrary to identifiable self-interest, it is necessary to resort to some version of "general interest" or "public interest" as the embodiment of a shared moral norm. That is to say, persons must be alleged to place positive private value on "public good" for the whole community of persons, over and beyond the value placed on their own individualized or partitioned shares.

However, it is not entirely clear where such a norm comes from and how it fulfills its role.³⁴

To conclude this section, what are the main insights for liberalism? I would summarize them as follows:

- Pay great attention to institutions and constitutions and not only to policy.
- When proposing institutional or constitutional reform, aim at securing net benefits for all.
- Pay great attention to empirical research on the effects of institutions and constitutions, but beware of the methodological difficulties in identifying such effects.
- Note the central importance of the protection of private property rights and a high-quality legal system for an economy to flourish.

number of jurisdictions, and then agreement is needed for those, among which people may then self-select at the post-constitutional stage. It is, however, beyond the scope of this paper to develop these alternatives in detail.

³¹ On institutional competition, see Bergh and Höijer (2008).

³² Buchanan (1975a) provides a positive evaluation of the utopia of Nozick (1974).

³³ One could argue that property rights are a necessary but not sufficient condition for economic development and that bourgeois virtues could not have been possible without such rights. This implies a complex interrelationship.

³⁴ Cf. Vanberg (2002).

- Note that certain political institutions seem relevant for how dominant the state becomes: especially, majoritarian electoral systems and bicameralism seem negatively related to the size of government and the welfare state; sometimes presidentialism stands in such a relationship to the government variables as well. For liberals it is also worth noting that strong checks and balances need not be associated with smaller government: such institutional features can, in fact, conserve an already large government.
- Think not only about how institutions affect such things as economic growth but also about what factors affects institutions, in order to provide a firm foundation for the political game.
- Even if not all of *Calculus* is accepted, do not reject it *tout court* but use it selectively, as an input of relevance. For example, even meta-utopias and liberal archipelagos can benefit from aspects of the contractarian constitutionalism it proposes.
- Complement its approach with analyses of culture, norms and other informal institutions, to better grasp what makes some societies prosper and others decline.

2.2. Generality

A strong feature of *Calculus* is the conviction that people in a kind of original position would reach consensus about the basic constitution, as identifiable interests are difficult to associate with different institutions that encompass many areas of life and which operate over extended periods of time. This would in turn entail a desire for *general* institutions, i.e., institutions that affect citizens in an equal manner, although the decision rule that would be likely to guarantee complete generality, unanimity, will probably not be adopted due to the costs of reaching agreement (*Calculus*, chs. 6, 19). Clearly, in the idealized *Calculus* analysis, generality is desirable and is affected by the design of political institutions.³⁵

However, what we see in real-life constitutions is a predominant role for the simple-majority rule, which enables narrow majorities to quite easily implement non-general rules and policies, sometimes influenced by interest groups, sometimes by groups of voters. As is stated in *Calculus* (pp. 291-292):

[I]t is the opportunity to secure differential benefits from collective activity that attracts the political “profit-seeking” group. Moreover, these differential benefits may be secured in either of two ways. First, activities may be approved which cause benefits to accrue to selected individuals and groups but which impose costs generally on all members of the community. ... Secondly, activities may be approved which provide general benefits to all members of the community but which impose costs on certain selected individuals and groups. The necessary condition for the presence of external costs, as we have used this term, is some difference in the distribution of the benefits and costs of collective action among members of the community.³⁶

³⁵ The generality principle may, in addition to being motivated on contractarian grounds, also be motivated on preference-utilitarian grounds: see Berggren (1999).

³⁶ This can be related to the role of power in Figure 1: groups will make use of the resources and formal decision-making options available to them to form economic institutions and politicians to *their* liking.

To illustrate the point, we can make use of two diagrams from Buchanan and Congleton (1998), where the generality argument is developed most fully. In Figure 2, payoffs of political decisions are given for two persons (A,B), who can be seen, respectively, as perfect representatives of a deciding majority (i.e., they are not in power at the same time). The one in power can choose between four decisions (I-IV), and the one not in power simply gets the payoff that follows from the majority's decision. When A is in power she will pick III, and when B is in power she will pick II. Both cases give a social payoff of 1.

Figure 2. Payoffs with a simple-majority rule

| | | | |
|---|--|-------------|------------|
| | | B | |
| | | 1,1 I | -1,2 II |
| A | | 2,-1 III | 0,0 IV |

Source: Buchanan and Congleton (1998, p. 23).

But the socially optimal decision is I, where the social payoff is 2. Under a simple-majority rule, a suboptimal choice will be made, whoever is in power. If one assumes that the majorities replace each other over time, there is reason to believe that they might realize the need for some type of change of the rules of the political game. This is where the generality principle comes in. It states that citizens are to be treated equally in political decision-making, as it prohibits decisions with differential outcomes (II and III), as illustrated in Figure 3.³⁷ Since these "off-diagonal" choices have been ruled out, only I and IV are possible. Since both A and B achieve better payoffs under I than under IV, the former will be picked. A constitutional rule of generality has transformed and, indeed, improved the political game over time.³⁸

Figure 3. Payoffs with a simple-majority rule and a generality principle

| | | | |
|---|--|----------|-----------|
| | | B | |
| | | 1,1 I | II |
| A | | III | 0,0 IV |

Source: Buchanan and Congleton (1998, p. 22).

Why can generality be expected to yield better total payoffs in the game of politics?³⁹ First, it provides benefits for people whose basic intuition of fairness is better satisfied, i.e., for those who agree that politics should not be used to secure favors for one's own group at the expense of others. Second, incentives for rent seeking are reduced, and reduced rent seeking

³⁷ Note that this refers to the outcomes of political decisions, not outcomes in other spheres of social and economic life.

³⁸ Under a unanimity rule, cell I would also be the outcome.

³⁹ Assume that the off-diagonals contain highly unequal but strictly higher payoffs for both parties, say (5,10) in II and (10,5) in III. Should the off-diagonals still be eliminated? That is, what if generality does not maximize social welfare - and what if general outcomes are Pareto-dominated by non-general outcomes?

entails welfare gains as resources which otherwise would have been used for lobbying can be used for productive activities.⁴⁰ Third, political decision-makers will be affected and desist from allocating public funds on the basis of group concerns rather than general-efficiency concerns. The reason for general decisions having this effect is expanded on below, in the section on robust political economy, but can be summarized by saying that politics is characterized both by a knowledge and a motivation problem that render politicians unable and unwilling to secure general-efficiency gains under normal (simple-majority-rule) circumstances.⁴¹

What, more exactly, does generality imply about political positions? It is one thing to say that political decisions should apply equally to all (in theory) and quite another thing to derive policy implications from this. De Jasay (1999, p. 116) delivers a sharp critique:

The inconclusive search for generality is inseparable from arbitrariness and discretion. Between the two extremes “every case is like every other” and “no case is like any other,” certain cases are like certain others if one variable is chosen as relevant for rulemaking, and other cases are like yet others if relevance is judged differently. The champions of each rule will claim that theirs is the truly general one, but such claims are irrefutable and function as value judgments.

Although there is something to this critique – the concept of generality is, by its very nature, vague and fungible – I think it overstates the case, for two reasons. First, I believe that even though there is a subjective element to it, if political (and legal) actors must explain how their proposals satisfy (or not violate) generality, this shifts political discourse and necessitates a public discussion about what is to be understood by the term. This is valuable in itself and may discourage more flagrant discriminatory proposals. Second, if one regards generality as a continuous variable, I believe that there would be relatively large agreement on the ranking of proposals in terms of how general they are. For instance, it seems to me probable that most people would agree that a lump-sum tax is more general than a proportional tax, which in turn is more general than a progressive tax. That being said, even a progressive tax can be said to feature general elements, as all who earn the same income face the same tax rate. Clearly, the principle is never clear-cut in practice, but it is not devoid of meaning either.⁴²

Buchanan and Congleton (1998) discuss many applications of the principle: suffice it here to mention the tax and transfer scheme they regard as most consistent with a generality principle. On the tax side, they argue in favor of proportional taxation (p. 93):

[T]he levy of a uniform or flat rate of tax on the defined base retains almost all of the properties of generality, even if the principle, as applied, is quite different from that present in market interaction. In our treatment to this point, we have assumed that a standard or flat-rate tax on a designated source or base, itself tied to the individual who is personally liable, meets the generality criterion. Such a characterization is acceptable, provided that it is understood to require that the exemption or exclusion of any particular subsource or person becomes equivalent to the levy of zero rates and, hence, must violate any version of a generality norm. If, for example, personal income is to be the base upon which tax liabilities are imposed, generality requires imposition of the same rate on all sources of income, to all persons, with no exceptions and for any reason.

⁴⁰ See *Calculus* (ch. 19), Tullock (1967) and Buchanan (1980).

⁴¹ It bears noting that Hayek (1960) forcefully argues for general laws, but the *Calculus* and Buchanan and Congleton (1998) approach takes the idea further to apply it to all political decision-making.

⁴² A similar reasoning can be found in Buchanan and Congleton (1998, ch. 8).

On the transfer side, they argue that if transfers are to be made, they should primarily be in the form of demogrants: that is, lump-sum redistribution. Tax revenues are then divided on an equal basis (in dollars, pounds, euros, crowns, or whatever the currency is) among the citizens. This effectively rules out some group securing differential favors at the expense of others: everyone gets the same amount. One can argue about whether the combination of proportional taxation and demogrants is the most general (or the optimal) tax-and-transfer system; but I think it safe to say that it is a good deal more general than the system in place in any modern welfare state.⁴³

One extension of the generality paradigm not directly covered in *Calculus* or in Buchanan and Congleton (1998) is non-discrimination in other settings than fiscal policy. I wish to argue that the theme of non-discrimination is essential to liberalism, both as a general attitude, which relates to the traditional liberal value of toleration, as stressed by Kukathas (2003, ch. 1) and a certain structural kind of egalitarianism, as stressed by Gray (1995) and *Calculus* (ch. 6), and as a characteristic of law, as stressed by Hayek (1960). In this, it differs from important strands of conservatism, which tend to have a fondness for authority, embrace social hierarchies more readily and stress traditional values that stem from a time when not least certain minorities were treated differently than others. Hayek (1960, p. 402–403) writes in “Why I Am Not a Conservative”:

I sometimes feel that the most conspicuous attribute of liberalism that distinguishes it as much from conservatism as from socialism is the view that moral beliefs concerning matters of conduct which do not directly interfere with the protected sphere of other persons do not justify coercion. ... In the last resort, the conservative position rests on the belief that in any society there are recognizably superior persons whose inherited standards and values and position ought to be protected and who should have a greater influence on public affairs than others. The liberal, of course, does not deny that there are some superior people – he is not an egalitarian – but he denies that anyone has authority to decide who these superior people are. While the conservative inclines to defend a particular established hierarchy and wishes authority to protect the status of those whom he values, the liberal feels that no respect for established values can justify the resort to privilege or monopoly or any other coercive power of the state in order to shelter such people against the forces of economic change.⁴⁴

More specifically, I would argue that generality should be just as important for social as for economic matters, which among other things implies equal legal opportunities for women, people of a different race, people of different religious beliefs and for gays, lesbians and transgendered people. As one example, same-sex marriage could be mentioned as a reform that would increase generality.⁴⁵

⁴³ Berggren (2000) argues that such a system brings with it a risk for high taxation, since welfare ambitions for those with low incomes may be so ambitious as to require quite high demogrants. Therefore, constitutional limits on spending may be required, if that outcome is not desired. Note the similarity of this system to ones with a guaranteed basic income for all, which in fact Hayek (1979, p. 55) advocated. (For more on arguments for a basic income, see, e.g., Birnbaum, 2012.)

⁴⁴ Buchanan (2005) makes a similar statement. For more on Buchanan and non-discrimination, see Horn (2011).

⁴⁵ The most general position, espoused by, e.g., Boaz (1997), is for the government to not be involved in marriages at all (except to enforce voluntary contracts). However, generality implies that so long as the government has

It may be asked if generality, given that we agree what it means and entails, is always desirable. Probably not. I would say that generality is a *prima facie* norm, that it is (or should be) the default position of a liberal, which however can be overridden by countervailing arguments. Perhaps it is better in certain situations to act non-generally for pragmatic reasons. To take a possible example: tax policy. Even if a more general tax system is preferable to a less general one (and the tax reforms of the 1980s and 1990s did increase generality⁴⁶), a political opening for a selective tax cut may manifest itself and may be better than no tax cut at all, especially if it can be expected to stimulate a wish for continued reforms in a general direction.⁴⁷ To take another example: It may be motivated to not extend marriage to five-year-olds, since they cannot be expected to fully understand what duties such an event brings with it. So clearly there are instances where a deviation from generally can be motivated – what the liberal does is to start from generality and he only unwillingly, after careful consideration, recognizes and accepts grounds for deviations.

What, in conclusion, is there for liberalism to learn from the advocacy of generality in *Calculus*? I suggest the following:

- Take the generality principle seriously, both as a potential constitutional rule and as guide for a liberal value system more broadly conceived.
- Consider how constitutional reform can increase generality.
- Strive towards a general tax- and transfer system: opt for reforms with broad tax bases and proportional rates; opt for a general welfare system, if a welfare system is to be had, perhaps entering into dialogue with proponents of a basic income (with an awareness that fiscal balance and low taxation are important liberal goals as well).
- In contrast to some strands of conservatism, apply generality generously to social issues as well, first and foremost treating minorities equally in the law, but also in terms of attitudes.
- Recognize the limits of generality, such as its being vague and hard to define and that there are sometimes countervailing arguments that override it, but do it with an attitude of regret.

2.3. Robust Political Economy

People can be characterized in terms of their motivation, on the one hand, and their cognitive capacity, on the other hand. By motivation is meant the degree to which people pursue goals that further their self-interest. By cognitive capacity is meant the degree to which people's

marriage laws, these should also be open for people of the same sex. For a Hayekian argument along such lines, see Rauch (2004).

⁴⁶ See Sandford (1993) and Buchanan and Congleton (1998, ch. 8).

⁴⁷ Buchanan's (1987b) "cycle theory" of tax reform is relevant here: that the tax system tends towards increasing non-generality as special interests get differential favors from politicians, up until the point where the political payoff to further non-generalities is very low. Then, a tax reform in a general direction, which "wipes the slate clean", takes place, and the game (with more and more non-general features of the tax system) can begin anew.

knowledge and rationality are imperfect. *Calculus* addresses these matters for people (and groups of people) in politics. In so doing, it is an early instance of what can be referred to as *robust political economy*. This term refers to social analysis that subjects a political system to “worst-case” assumptions about motivation and cognitive capacity. It asks how well a certain political system functions if we assume that politicians (and voters, interest groups and bureaucrats) are self-interested and are not very knowledgeable or rational. A system is robust if it works well even under such circumstances.⁴⁸

How does *Calculus* treat these issues? A basic starting point is methodological individualism (*Calculus*, chs. 1, 2): to regard individuals as the primary actors to be analyzed. More precisely (p. 13):

Having rejected the organic conception of the State and also the idea of class domination, we are left with a purely individualist conception of the collectivity. 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.

Without the individualist approach, it would make little sense to discuss motivation and cognitive capacity. The outcomes of the processes of government can be seen as a function of the characteristics of the individuals who make up government.

As for the motivation of political actors, the authors of *Calculus* are careful to maintain that they do not necessarily view people in politics as actually being purely self-interested, and that they do not embrace self-interest as a norm, but they find it a useful assumption to make. On p. 305 they write:

In our more rigorous analytical models we have adopted the extreme assumption that each participant in the political process tries, single-mindedly, to further his own interest, at the expense of others if this is necessary. We were able to show that, even under such an extreme behavioral assumption, something closely akin to constitutional democracy as we know it would tend to emerge from rational individual calculus. We believe that this in itself is an important proof that should assist in the construction of a genuine theory of constitutional democracy.⁴⁹

This is quite in the spirit of robust political economy. *Calculus* proceeds to analyze, to be “on the safe side”, what effects for constitutional decision-making the self-interest assumption has.

What about cognitive capacity? *Calculus* devotes ch. 4 to this issue applied to the individual citizen, and for our purposes it especially bears noting that rationality is thought to be present to a lesser degree in politics than in the market. On pp. 38–39 the authors write:

⁴⁸ On robust political economy, see, e.g., Boettke and Leeson (2004) and especially Pennington (2011).

⁴⁹ Cf. *Calculus* (App. 1) and Brennan and Buchanan (1985, p. 59): “Using the *Homo economicus* behavior model in constitutional analysis, and justifying this use on analytic rather than empirical grounds, is a procedure we have borrowed from the classical political economist-philosophers in their analysis of political institutions. And we can, perhaps, do no better in this connection than appeal to David Hume: ‘In constraining any system of government and fixing the several checks and controls of the constitution, every man ought to be supposed a knave and to have no other end, in all his actions, than private interest.’”

A second and important reason why individuals may be expected to be somewhat less rational in collective than in private choices lies in the difference in the degree of responsibility for final decisions. The responsibility for any given private decision rests squarely on the chooser. The benefits and the costs are tangible, and the individual tends to consider more carefully the alternatives before him. In collective choice, by contrast, there can never be so precise a relationship between individual action and result, even if the result is correctly predicted. ... For these reasons, and for certain others that may become apparent as the analysis is developed, we should not expect models based on the assumption of rational individual behavior to yield as fruitful a result when applied to collective-choice processes as similar models have done when applied to market or economic choice.

The message is that voters do not really have strong incentives to become knowledgeable or apply strongly rational methods of analysis to the political process.⁵⁰ A possible effect is that these principals will tend to influence or allow the politicians *qua* agents to act in ways that do not benefit most of them over time. One can add to that that politicians themselves tend to be plagued by a cognitive capacity problem, as argued by Rizzo and Whitman (2009a).

This issue of robust political economy is prescient at present due to the popularity of behavioral economics and the paternalism it sometimes gives rise to.⁵¹ As empirical research documents that ordinary people display low degrees of knowledge and rationality, some draw the conclusion that politicians and bureaucrats need to help them make better decisions, either by hard or soft paternalism (the latter entailing nudges rather than prohibitions). To this one can reply that, on the one hand, decision-makers may not have the cognitive capacity or, indeed, the motivation to devise helpful schemes and, on the other hand, that the problems of rationality may not be all that severe in the market. *Calculus* (p. 298) states:

We know, of course, that in the economic as well as the political relationship, individuals are not entirely rational, they are not well informed, and they do not follow self-interest in all circumstances. Yet we can observe that people purchase more goods at lower prices, that wage rates for similar occupations tend to equality, that the return on investment will tend to be equalized in different employments, and many other propositions of "positive" economics that can be subjected to empirical testing.

This reasoning is akin to that of Smith (2000), who argues that institutions induce economic actors to act *as if* rational.⁵² Put shortly, institutions and market experience affect how a given level of rationality translates into actions and outcomes.

Even though the knowledge problem in politics is recognized in *Calculus*, one aspect not really addressed concerns the implications of this problem for the very ideal of constitutional choice and agreement. It is not just that we must choose rules that enable us to deal with the knowledge problem (possibly by allowing markets to function relatively freely) – we must also recognize that cognitive limitations plague those who are to agree on what those rules are. Can people, given such limitations, be expected to agree on constitutional rules? If they can be expected to agree, what justificatory power does such agreement, not based on thorough knowledge and understanding, entail? These are tricky and interesting questions that, however, are largely beyond the scope of this paper.

⁵⁰ See Caplan (2007).

⁵¹ On behavioral economics, see Camerer and Loewenstein (2004) and Wilkinson (2007). On paternalism, see Glaeser (2006) and Rizzo and Whitman (2009b).

⁵² A similar point is made by List and Millimet (2008) and List (2011).

In all, *Calculus* is a pioneering work for analyzing social phenomena in individualist terms, applying assumptions of self-interest and less-than-perfect cognitive ability. How is this relevant for liberalism? My suggestions:

- Liberalism should not be defended with claims of economic actors always being rational and doing the right thing. They do not – but neither do they when they are voters, and neither do political decision-makers. Problems with knowledge and rationality may speak in favor of *less* political intervention, as argued by Glaeser (2004), not least since if political decisions are mistaken, the effects are so great to the coercive and all-encompassing nature of politics.
- Liberals should not say that everyone is (purely) self-interested, because they are not, not in the market and not in politics. However, liberals should apply an assumption of self-interest in thinking about how to devise institutions.
- The robust political economy approach can be used to forcefully question pleas for paternalism. (Paternalist economists themselves do not pay attention to the cognitive challenges faces political decision-makers, as shown by Berggren 2012b.) If decision-makers are assumed to be self-interested and imperfectly knowledgeable and rational, can paternalism work at all?

2.4. Paretian Constructivism

What is the proper role of the economist or, more generally, the social scientist? *Calculus* touches on this issue (pp. 93–94):

The welfare or political economist may construct operational propositions about specifically proposed policy changes; he may advance a proposal as “presumed Pareto-optimal.” This proposal then takes the form of a hypothesis subject to testing, subject to conceptual refutation. The test lies in the degree of support that the proposal obtains. The attainment of consensus in support of the change would lend support to the hypothesis; failure would tend to refute the hypothesis.⁵³

Buchanan (1987a, p. 250) states a version of this applied to the rules of the political game:

Normatively, the task for the constitutional political economist is to assist individuals, as citizens who ultimately control their own social order, in their continuing search for those rules of the political game that will best serve their purposes, whatever these might be.⁵⁴

This points at a relatively humble and non-elitist role for the social scientist.⁵⁵ He should not advance specific proposals of reforms of institutions or policy as clearly desirable or claim that

⁵³ This view was formulated by Buchanan (1959). On applying the Pareto notion in the design and reform of institutions, see also *Calculus* (ch. 12, p. 319) and Buchanan (1962).

⁵⁴ Buchanan (1987, p. 243) especially wants the social scientist to focus on institutions: “Stripped to its essentials, Wicksell’s message was clear, elementary, and self-evident. Economists should cease proffering policy advice as if they were employed by a benevolent despot, and they should look to the structure within which political decisions are made.”

they will clearly increase social welfare. Rather, he should, at least as a conceptual exercise, develop proposals that are subjected to the citizens for consideration on the expectation that they will all approve of (some of) them. If they do, the proposals satisfy the Pareto criterion and are desirable (given the contractarian normative basis of *Calculus*).

Clearly though, it is hard to apply this approach in practice: all decisions cannot be voted on by everyone; very few, if any, proposals would in any case be accepted by everyone; and if voters are not very rational, one may question their ability to properly assess different proposals. One practical way forward may be to aim at “compromises, side-payments, deals, many-issues adjustment” (Buchanan 1985, p. 29). This may point at a modified Kaldor-Hicks criterion, where the gains of some must outweigh the losses of others for a policy change to be desirable and where compensation is paid to those who lose out on deals. The social scientist can include such schemes when developing reform proposals and when decision-makers try to assess whether they would meet with popular approval.

Hence, the *status quo* is where the exercise necessarily starts, and unless there is widespread acceptance of a departure from this state of affairs, change is not considered desirable (*Calculus*, pp. 260–262; Vanberg 2004). While this can be expected to be a less reform-prone system than a system that more readily follows the advice of reformist social scientists, it is still in general one in which reform proposals are very welcome and where implementation of them is gladly accepted if people (can be assessed to) accept them.⁵⁶

This reform-friendliness differs from the more basic reform-skepticism of conservatives, who assign a positive value on the *status quo* as such, according to Buchanan (2005, p. 2), and of Hayek (1978, ch. 1), who warns against “constructivist rationalism” or “rational constructivism”.⁵⁷ *Calculus* (p. 306) instead exemplifies the meliorist attitude mentioned by Gray (1995):

With the philosophers of the Enlightenment we share the faith that man can rationally organize his own society, that existing organization can always be perfected, and that nothing in the social order should remain exempt from rational, critical, and intelligent discussion. Man’s reason is the slave to his passions, and recognizing this about himself, man can organize his own association with his fellows in such a manner that the mutual benefits from social interdependence can be effectively maximized.

How is this view relevant for liberalism? In these ways, I suggest:

- By clarifying that research from social science is important (as I argue in Section 2.1 with regard to findings in institutional and constitutional economics). Reform proposals should be developed on the basis of the best available knowledge.
- By stressing that one should beware of social scientists who present proposals as welfare-improving on the basis of utilitarian- or social-welfare-function-type calculus. One

⁵⁵ On elitism in academia, see Buchanan (1985).

⁵⁶ See Brennan and Buchanan (1985, ch. 1, section IV). Note, however, that if the constitution to which citizens have acquiesced (or to which they could have been expected to acquiesce) entails a simple-majority rule, policy reforms *can* be undertaken even though only a slim majority favors them. The spirit of *Calculus* nevertheless implies that it is desirable that as many people as possible approve of reform.

⁵⁷ See Buchanan (1977, 1986) and Brennan and Buchanan (1985, pp. 9–10) for a critique of Hayek in this regard. Berggren (2009) argues that Hayek was not as hostile to informal-institutional change as some suggest.

should ask: Given the research findings that document effects of alternative proposals, which proposals would reasonably attain the most (preferably unanimous) support? This indicates a humble liberalism.

- By encouraging liberals themselves to apply some of the recommendations when developing policy proposals, not least to think about compensation and side-payments as part of reform packages.
- By inspiring it to adopt an open attitude to reforms and, especially, reform proposals: to embrace a humble constructivism (see Buchanan 2001).

2.5. Normative Fundamentals

In this last section, I will, perhaps controversially, argue that *Calculus* provides inspiration for a liberalism *without foundations*, or what could be termed a *nihilist* liberalism, and that this is an appealing model for liberalism.⁵⁸

First, what do I mean by the terms “foundations” and “nihilism”? I essentially refer to the metaethical character of the central values of an ideology such as liberalism: whether they are objective or subjective. For example, one may hold that freedom is normatively basic no matter what people think about it: it is considered a moral fact, or a truth. The same may be said for individual rights. A prime example of this way of viewing things is given by Nozick (1974, p. ix) when he states:

Individuals have rights, and there are things no person or group may do to them (without violating their rights).

He considers this to be a fact, just like the earth revolves around the sun. An ideology without foundations, or a nihilist ideology, is one that denies the existence of moral facts; instead values are simply the reflections of subjective, personal opinions or sentiments. A nihilist liberal may still think that others should think that, or may still think as if, individuals have (moral) rights, even though he believes that as a matter of fact, they do not (since they cannot have [moral] rights).

Calculus (p. 4) is skeptical of the view that politics is to be seen as a means through which “truth” can be found:

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. The conceptions of rationalist democracy have been based on the assumption that individual conflicts of interest will, and should, vanish once the electorate becomes fully informed. We do not deny the occasional validity of this conception, in which rules of political choice-making provide means of arriving at certain “truth judgments.” However, we do question the universal, or even the typical, validity of this view of political process. Our approach to the collective

⁵⁸ I admit that I somewhat reinterpret *Calculus* in this section, making a stronger case than the book does for “liberal nihilism”, but as outlined in Section 1, I am no literalist but sometimes use the book for (at times loose) inspiration. I do think, however, that the flavor of my argument here does resonate quite well with *Calculus* and later statements by Buchanan.

decision-making processes is similar to that expounded by T. D. Weldon under the term "individualist democracy."

In later writings, Buchanan rejects the "truth" view of politics more firmly. For example, Buchanan (1975b, p. 1) begins:

Those who seek specific descriptions of the "good society" will not find them here. A listing of my own private preferences would be both unproductive and uninteresting. I claim no rights to impose these preferences on others, even within the limits of persuasion. In these introductory sentences, I have by implication expressed my disagreement with those who retain a Platonic faith that there is "truth" in politics, remaining only to be discovered and, once discovered, capable of being explained to reasonable men. We live together because social organization provides the efficient means of achieving our individual objectives and not because society offers us a means of arriving at some transcendental common bliss. Politics is a process of compromising our differences, and we differ as to desired collective objectives just as we do over baskets of ordinary consumption goods. In a truth-judgment conception of politics, there might be some merit in an attempt to lay down precepts for the good society. Some professional search for quasi-objective standards might be legitimate. In sharp contrast, when we view politics as process, as means through which group differences are reconciled, any attempt to lay down standards becomes effort largely wasted at best and pernicious at worst, even for the man who qualifies himself as expert.⁵⁹

In lieu of "truth", or objective values, *Calculus* regards the contractarian *procedural* criterion as normatively basic (as described briefly in Section 2.1). In the terminology of Vanberg (2011), it advances constitutional liberalism (which respects the freedom of individuals to choose the constitutional environment in which they wish to live) rather than liberal constitutionalism (which focuses on the need to provide institutional safeguards of individual liberty as private autonomy). It is what people agree to that is desirable, and there is no external criterion available that can be used to discriminate between various institutional settings. For example, if people agree to institute a political system with a qualified majority rule, then such a system may, in due time, introduce certain types of redistribution which would violate many liberals' values. Then that outcome is legitimate to contractarian, procedural liberal. Naturally, there are different preferences among citizens, and those that dislike the arrangement (plausibly many liberals) may argue in favor of policy or institutional change, and proposals to abandon redistribution may become more popular and meet the approval of a qualified majority. If so, *that* outcome is legitimate. And so on.⁶⁰ There is no guarantee, in other words, that the system of rules chosen behind a veil of uncertainty, at the stage of constitutional formation, will be *substantively* liberal, in the sense of Hayek (1973, p. 1), or that they will give rise to outcomes that are liberal in *that* way.⁶¹

⁵⁹ See also Buchanan (1975b, pp. 15, 164; 1986; 1987a) and Buchanan and Vanberg (1989).

⁶⁰ This is akin to possible developments of Nozick's (1974) meta-utopia and of Kukathas's (2005) liberal archipelago. Many voluntary associations of those settings may decide to implement illiberal institutions and policies. It is *the system* that is liberal – the ability of people to move between associations and associate with the one that best meets their preferences – not necessarily the institutions and policies of associations within the system.

⁶¹ Buchanan (1972) criticizes Rawls for identifying "the difference principle" as the outcome of decision-making in the original position. Instead, he argues that a contractarian should accept the open-ended character of the constitutional process, which is compatible with many different distributional principles. Nevertheless, Buchanan

However, should not the procedural criterion *per se* be seen as objectively valid? In *Calculus* (pp. 13–14), we can read:

Since we have explicitly rejected the idea of an independent “public interest” as meaningful, how can criteria for “betterness” or “worseness” be chosen? Are we reduced so early to purely subjective evaluation? We do not propose to introduce such subjective reference, and we do not employ any “social-welfare function” to bring some organic conception in by the back door. Analysis should enable us to determine under what conditions a particular individual in the group will judge a constitutional change to be an improvement; and, when all individuals are similarly affected, the rule of unanimity provides us with an extremely weak ethical criterion for “betterness,” a criterion that is implicit in the individualist conception of the State itself. We do not propose to go beyond welfare judgments deducible from a rigorous application of the unanimity rule. Only if a specific constitutional change can be shown to be in the interest of all parties shall we judge such a change to be an “improvement.” On all other possible changes in the constraints on human behavior, nothing can be said without the introduction of much stronger, and more questionable, ethical precepts.⁶²

While this statement is not especially clear about what meta-ethical character the unanimity rule is thought to have, the authors do regard it as an “extremely weak” ethical criterion. They avoid stronger criteria, since do they not see any basis for saying that this or that institution is objectively preferable. Had they recognized such a basis, it would not matter if people consented to those institutions or not: it would be desirable to have them implemented regardless. If there is no such basis for substantive criteria, how could there be one for their procedural criterion? Where would it come from? How could it be verified? The authors are quiet on these issues.⁶³ There is no attempt to derive the procedural criterion of unanimity, or the perhaps more basic ethical criterion of mutuality of advantage, from anything objective or more basic: it is simply, in *Calculus* and in later writings by Buchanan, considered intuitively desirable. It is without further foundations than that. Hence, I suggest that the most reasonable interpretation is that this ethical criterion be seen as subjective. The authors of *Calculus* should have termed it such.⁶⁴ Individuals are regarded as sovereigns in constitutional matters, not because this is a moral fact that can be rationally deduced, but because values in general (including the one favoring the unanimity rule) are subjective and because there is therefore no better way of ascertaining mutually beneficial cooperation (which is also valued subjectively) than agreement. It is not always realized that it is perfectly possible to advance an ethical criterion (firmly) on subjectivist grounds, and in a setting where substantive liberalism is rejected

(1991) predicts that institutions protecting a distinct sphere of voluntary exchange, along the lines of Adam Smith’s idea of natural liberty, would find support behind a veil of uncertainty, at least if problems with externalities are perceived small.

⁶² Vanberg (2012) suggests that this is not really an ethical criterion, in spite of the claim of the authors, but a procedural criterion for testing what qualifies as mutually beneficial. It is mutuality-of-gain that is the ethical norm (in politics as well as in the market), and it is secured by what Vanberg (2011) calls individual sovereignty.

⁶³ Indeed, in ch. 2, the authors recognize the infinite regress problem of the criterion: who decides on the first decision-making rule when no decision-making rule is in place? This also implies, in my view, a basic subjective element in the construct.

⁶⁴ In a similar spirit, Kliemt (2011, p. 279) writes: “It seems to me that Buchanan should insist that he is an ethical skeptic (non-cognitivist) in the preceding (relevant) sense.”

because there is no “truth” in politics, there is no foundation for an objective ethical criterion in the form of a rule of unanimity.

Why does it matter that *Calculus* is able to inspire a liberalism without foundations? The main benefit of such a liberalism is, in my view, that it creates a basis for a “big-tent approach,” as envisaged by Klein (2004). There is no basis for “ranking” different philosophical bases for motivating liberalism: they are all seen as subjective utterances without truth value. This means that it becomes unimportant what foundations people have for their liberalism: the important and uniting thing is positions in favor of smaller government and less restrictive government institutions and policies. If one holds that there are objective values, then one probably feels that it is important to argue for that position, as it is an integral part in the motivation for the liberal positions vis-à-vis government (e.g., to be able to claim that “individuals have rights”). Liberals without such a foundation may be frowned upon. The nihilist, procedural liberalism described here does not really care about foundations. This can be expected to strengthen liberalism: focus can be directed towards securing institutional reforms in a liberal direction instead of spending scarce time and effort on developing philosophical, foundational arguments and on debating, among liberals, which philosophical foundations are correct.⁶⁵

Buchanan (1986) presents a second benefit: that coercion may be seen as morally legitimate by those who believe they have seen moral truth. In contrast, he writes about the alternative metaethical view, favored by him (p. 51):

There is a positive side to value relativism that is too easily overlooked. Because values are relative, and because the individual recognizes that his values are indeed his own, it becomes possible for man to model an existence in social interaction with other persons that does not involve acquiescence in a single-value norm.⁶⁶

That is, the fundamental liberal value of toleration, of accepting the plurality of visions of the good life, seems to follow naturally from regarding values as being subjective in character. Many liberals are not used to thinking about liberalism having a potential to be oppressive, but one can imagine a unitary society in which those who desire to live non-liberal lives are constrained in various ways.

But if the unanimity rule is a subjective ethical criterion, why should we care about it? First, if all values are subjective, then it is not only the case that this particular criterion is subjective, but any alternative is as well. Second, the main argument in its favor is not, then, that it is true or objectively valid, but its consequences: that it better than alternative criteria secures outcomes that people tend to value (such as social harmony and mutually beneficial rules for the political game – see *Calculus*, pp. 250, 252, 261). Third, the intuition that the authors of *Calculus* have is that normative individualism is the only thing that remains when everybody’s

⁶⁵ It may be said that my making this argument about there not being philosophical foundations is, indeed, an argument about philosophical foundations (albeit on the meta level), and as such it has been developed using scarce time and effort and may causa intra-liberal debate.

⁶⁶ See also Buchanan (2005, pp. 6–8). Kelsen (1955) makes a similar argument.

values are equally “valid”, and if one shares this intuition, the ethical criterion should be appealing.⁶⁷

What, then, can be concluded from this section? Some points:

- Liberalism can be motivated on objective or subjective metaethical grounds. I suggest that *Calculus* and later writings by Buchanan imply the latter. Any extraindividual grounds for a liberal society are rejected.
- As a result, the contractarian enterprise is seen as cooperative: nobody can claim any moral superiority and whatever people jointly decide is legitimate.
- On a nihilist liberalism, a big-tent approach is natural: to welcome anyone who holds the same views towards government, irrespective of their foundations for such views. This gives liberalism unity and strength.
- On a nihilist liberalism, tendencies towards coercion and authoritarianism can be expected to be less prominent than under a liberalism based on supposedly objectivist values.
- The unanimity rule is desirable not because it is an objective ethical criterion or a moral fact but because it is perceived to entail widely desired outcomes (especially mutually advantageous rules) and correspond to the intuition that such a rule is desirable when nobody can claim moral superiority.

4. Summary and Concluding Remarks

This paper constitutes an attempt to present certain elements of *Calculus* that provide insights of relevance for liberalism (but perhaps also for other ideologies). These elements do not form a complete liberalism in any sense but provide building blocks that can be added, jointly or individually, to more comprehensive ideological constructs. Nor do they necessarily represent the most important features of liberalism as a whole, but I do hold that they are important.

In my view, liberalism can be vitalized and learn from this 50-year-old book in at least five areas, implying a constitutionalist, generalist, robust, constructivist and nihilist liberalism. Any ideology probably needs rejuvenation and openness to change, of the kind *Calculus* can provide. In Table 4, I briefly summarize what I take the book to imply in the five areas.

⁶⁷ One can add to this that there are several reasons why a claim of objectivity does not render an ethical position firmer or more convincing than a claim of subjectivity – see Berggren (2004) for an extended argument. Epstein (2003) argues differently, however.

Table 4. Lessons from *Calculus* for liberals

| Area | Lessons |
|--------------------------|---|
| Constitutionalism | <ul style="list-style-type: none"> • Pay attention to institutions and not only to policy. • When proposing reforms, aim at securing net benefits for all. • Pay attention to empirical research on the effects of institutions. • Note the central importance of private property rights for economic growth. • Note that majoritarian electoral systems and bicameralism seem negatively related to the size of government and the welfare state. • Strong checks and balances need not be associated with smaller government: such institutional features can conserve an already large government. • Also consider what causes institutions to change. • Even if not all of <i>Calculus</i> is accepted, do not reject it <i>tout court</i> but use it selectively, as an input of relevance. • Complement its approach with analyses of culture, norms and other informal institutions, to better grasp what makes some societies prosper and others decline. |
| Generality | <ul style="list-style-type: none"> • Take the generality principle seriously. • Consider how constitutional reform can increase generality. • Strive towards a general tax- and transfer system. • Apply generality generously to social issues as well, treating minorities equally. • Recognize the limits of generality, such as its being vague and hard to define. |
| Robust political economy | <ul style="list-style-type: none"> • Liberalism should not be defended with claims of economic actors always being rational and doing the right thing. • Problems with knowledge and rationality may speak in favor of <i>less</i> political intervention. • Everyone is not self-interest but assuming they are is good when designing institutions. • The robust political economy approach can be used to forcefully question pleas for paternalism. |
| Paretian constructivism | <ul style="list-style-type: none"> • Reform proposals should be developed on the basis of the best available scientific knowledge. • A humble liberalism asks: Which reform proposals would reasonably attain the most support? • Think about compensation and side-payments as part of reform packages. • Have an open attitude to reforms and, especially, reform proposals: embrace a humble constructivism. |
| Normative fundamentals | <ul style="list-style-type: none"> • <i>Calculus</i> implies a subjectivist basis for liberalism. • As a result, the contractarian enterprise is seen as cooperative: nobody can claim any moral superiority and whatever people jointly decide is legitimate. • Under a nihilist liberalism, a big-tent approach is natural: to welcome anyone who holds the same views towards government, irrespective of their foundations for such views. This gives liberalism unity and strength. • Under a nihilist liberalism, tendencies towards coercion and authoritarianism can be expected to be less prominent than under an objectivist liberalism. • The unanimity rule is desirable not because it is an objective ethical criterion or a moral fact but because it is perceived to entail widely desired outcomes (social harmony and mutually advantageous rules). |

Finally, why does liberalism need new inspiration? I would like to suggest two reasons, one internal and one external. The internal reason is that a system of thought that is not

constantly challenged and discussed, by its followers and others, risks becoming stale, obsolete and petrified. This relates to Mill's (1879, ch. 2) argument for freedom of thought and expression. The second reason is that in order to be thought relevant by people who are not yet liberals, it is important to see how the liberal program can be developed to match modern attitudes and preferences to a larger degree (without sacrificing basic normative elements). I hope that this exposition and the book it draws inspiration from can aid in both ways.

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