

The Calculus of Consent

and Madisonian democracy

Henry Kenney

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Foreword

The purpose of FMF *Monographs* is to use the analytic method of political economy to shed light on how best the promotion of free markets will improve the workings of the South African economy. In particular, authors are urged to apply the microeconomic approach of studying how individuals, firms and households behave in response to either naturally occurring environmental events or to institutional frameworks which have either evolved over time or been imposed by statute.

This *Monograph* tackles the problem at root. The author, a scholar with a profound understanding of the economics of constitutions and a deep knowledge of South Africa's economic history, turns his attention to how constitutions evolve in the early years of a nation's life. He does not stop there. He illustrates how James Madison argued, in the late eighteenth century, that 'rainbow nations' could achieve stability, liberty and justice even if their territory was vast and their populations diverse.

Madison wrote some of the 85 papers (the majority were composed by Alexander Hamilton and some by John Jay) which appeared as *The Federalist* in New York state newspapers over the signature Publius in 1787-88. The aims of *The Federalist* were to improve on the existing American Articles of Confederation, encourage support for a new constitution and to demonstrate how good government was possible if appropriate institutions could be devised to protect the rights of individuals in day-to-day commerce while compensating for the deficiencies in both reason and virtue of ordinary men in government.

Madison's analysis is particularly pertinent to modern economic thought since two of the most recent Nobel Laureates (James Buchanan and Douglass North, in 1986 and 1993 respectively) received their awards for work in this field. And it is of particular consequence in South Africa where a first attempt at drafting a modern and non-racial constitution was made within the last decade.

Constitutions make a difference. Few will dispute what seems so self-evident, but how much of a difference?

Most recently, in Zimbabwe, we have seen the destruction of a constitution which seemingly guaranteed all the standard freedoms. But Zimbabwe is not alone; constitutional irrelevance has been the rule in Africa and in even less benighted parts of the world.

So the sceptics may appear to have an irrefutable case. Are constitutions mere window dressing behind which barbarians do their will?

And yet, Kenney argues, doubts remain. There are written constitutions which have been singularly successful, as in the United States, Australia and Canada. Why some countries and not others?

The United States constitution, drawn up in 1787 and 1788, has long been regarded as the very model of constitution-making for a democracy. In fact, the philosopher Alfred North Whitehead has cited its framing as one of the only two occasions in history he was aware of 'when the people in power did what needed to be done about as well as you can imagine it being possible.... They were able statesmen, they had access to a body of good ideas; they incorporated these general principles into the instrument without trying to particularise too explicitly how they should be put into effect; and they were men of immense practical experience themselves.'

So it is perhaps not too surprising that James Buchanan and Gordon Tullock in *The Calculus of Consent* (1962) enlisted 'Madisonian democracy' (after the man famously known as the Father of

the Constitution, who also became the fourth US President) as an historical analogue to their own suggestions for optimal constitutional design.

In this book, which has become a classic in the theory of public choice, ie the application of economic reasoning to political processes, the authors see 'politics as exchange' and assume that individuals maximise their utility.

Given these assumptions, the authors attempted, as Buchanan later explained, to derive 'a logically consistent basis for a constitutional and democratic political structure, one which seemed to possess many of the features of the polity envisaged by the Founding Fathers'.

Kenney argues however that the record suggests that the process by which the American constitution emerged was very different from that proposed by Buchanan and Tullock.

They were particularly sceptical of majority voting as a means of reaching political decisions. So they distinguished between a pre-constitutional stage and a post-constitutional stage. In the former rational individuals maximising their own utility unanimously agree upon a constitutional arrangement in which *post*-constitutional decisions may be taken by majority vote. This would minimise the transactions costs of arriving at unanimous decisions all the time while accepting the principle of freedom of choice.

But this does not describe the pre-constitutional stage in America. Even if the substantial consensus which emerged in Philadelphia, after much hard bargaining, can be seen as a real-world analogue to unanimity the subsequent ratification by the respective state conventions often took place by the barest majorities.

Also, the 1787 convention represented at most the better-heeled male members of the 13 states. Women and slaves were not represented. All this is at variance with the emphasis in *The Calculus* on representativeness. While something like 'Madisonian democracy' *might* have emerged from the process envisaged by Buchanan and Tullock, this is not how it eventually came into being.

Even so, Kenney points out, the American constitution has been one of history's relative success stories. Fairly soon after its acceptance, many Latin American countries paid it the compliment of emulation, adopting constitutions based on federalism and decentralisation.

Yet the history of North and Latin America tells us that constitutions do not operate in a vacuum. Douglass North put it succinctly: 'In the case of the United States, the Constitution embodied the ongoing heritage of first British and then colonial economic and political policies complemented by a consistent ideological modelling of the issues. In the case of Latin America, an alien set of rules was imposed on a long heritage of centralized bureaucratic controls and accompanying ideological perceptions of the issues. In consequence, Latin American federal schemes and efforts at decentralization did not work after the first few years of independence.'

In short, the best-laid schemes of constitution-makers will not work unless they operate within a receptive environment. We see this too in Africa, that veritable graveyard of democratic constitutions.

The lesson for us in South Africa appears fairly obvious. In the absence of a long-established democratic tradition, much will depend on the determination of our rulers to make democracy work. Condoning the non-democratic behaviour of politicians in neighbouring states does not inspire con-

fidence in this determination. Nor do attempts to place laws on the statute books that do not comply with the letter, values and spirit of the South African constitution.

Kenney's thesis is that only good constitutions can deliver. His corollary is that the best of constitutions will quickly wither if a country's leadership is explicitly uncommitted to the underlying liberal principle of the free exchange of ideas – and by extension also implicitly unenthusiastic about facilitating free movement of goods and capital. Kenney's conclusions, although not necessarily shared by the members, staff or Directors of the Free Market Foundation are offered here to stimulate debate. Concerned participants in or observers of the development of democracy in South Africa will find this Monograph both constructive and thoughtful.

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References

Fein, Bruce (1995) *The final constitution for the Republic of South Africa: A critique of the interim constitution*, Free Market Foundation, Johannesburg.

Liggio, Leonard P (1992) *The importance of political traditions*, Free Market Foundation, Johannesburg.

North, Douglass C (1990) *Institutions, institutional change and economic performance*, Cambridge University Press, Cambridge.

O'Dowd, Michael C (1999) *Liberal reflections*, Free Market Foundation, Johannesburg.

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Henry Kenney studied at the University of Cape Town and the London School of Economics. He has lectured on economics and economic history at the Universities of Port Elizabeth, Cape Town and the Witwatersrand. A conceptual and a practical economist, Kenney has been on the editorial staff of *The Financial Mail*, and worked for a period as the Senior Economist of the Chamber of Mines in Johannesburg. He is the author of numerous academic articles in international journals. His books include *Architect of Apartheid* (Jonathan Ball, 1980), the definitive and widely acclaimed study of the career of Dr HF Verwoerd; and *Power, Pride and Prejudice* (Jonathan Ball, 1991), the first and still the major public choice economic analysis of Nationalist rule in South Africa from 1948 through to the release of Nelson Mandela in 1990. For the Free Market Foundation he authored *Growth Theories and their Application to the Beloved Country*, Monograph No.31, 2001.

1 Constitutions, individual choice and the economic approach

Introduction

The Calculus of Consent by James Buchanan and Gordon Tullock (1962) has been one of the formative works in the development of the theory of public choice, also known as the economic theory of politics. More than a quarter of a century after its publication, Buchanan stated that “the public choice perspective combines two distinct elements: the conceptualization of ‘politics as exchange’ and the extension of the economists’ model of utility maximizing behaviour to political choice. The Calculus of Consent was the first book that integrated these two elements into a coherent logical structure” (Buchanan, 1991, p.43).

More specifically, the Calculus is concerned with what has come to be known as constitutional political economy. The authors believed that their theoretical framework offered insights into at least the American way of designing constitutions. In 1975 Buchanan summarised their intentions in the Calculus: “In that book, Gordon Tullock and I indulged our fancies and deployed our professional talents in deriving a logically consistent basis for a constitutional and democratic political structure, one which seemed to possess many of the features of the polity envisaged by the Founding Fathers. We offered an understanding of the institutions that have historically emerged in America, an understanding that differs in fundamental respects from that reflected in the conventions of modern political science” (p.6). In the Calculus itself, Buchanan and Tullock suggested that “the Madisonian theory of democracy (which is substantially embodied in the American constitutional structure)...may be compared with the normative theory that emerges from the economic approach”. But they did not pursue the comparison very far: “The determination of the degree of correspondence between this theory and the theory implicit in the American Constitution is left to the reader” (pp.24-25).

In 1988 Buchanan was still impressed by the similarity between the approaches: “What has been and remains surprising to me has been the reluctance and/or inability of social scientists and philosophers, and especially economists, to understand and to appreciate the relationships between the institutions of voluntary exchange, the choice among constitutional rules, and the operation of ordinary politics within such rules. James Madison clearly had such an understanding, which we tried to articulate in modern analytical language a quarter-century ago” (pp.48-49, 1991).

Perhaps more surprisingly, neither historians nor public choice theorists have investigated this possible correspondence. This is all the more surprising since there has been much debate between historians about the conceptual framework of the Founding Fathers – especially the political thought of the so-called Father of the Constitution, James Madison. This was most famously expressed in his contributions to *The Federalist* papers, the series of essays which appeared soon after the Philadelphia Convention of 1787, advocating the popular ratification of the newly-designed constitution. In the light of the scholarly controversy, an examination of the claims of Buchanan and Tullock may be a useful test of the explanatory power of their approach to constitution-making.

The argument of *The Calculus*

The authors begin with the assumption of methodological individualism. “Unless those who would be participants in the scientific dialogue are willing to locate the exercise in the choice calculus of individuals, *qua* individuals, there can be no departure from the starting gate. The autonomous individual is a *sine qua non* for any initiation of serious inquiry in the research program” (Buchanan, 1991, p.14). One challenge then is to explain how the utility-maximising behaviour of individuals leads to collective action. This is seen 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. This approach makes the State into something that is constructed by men, an artefact. Therefore, it is, by nature, subject to change, perfectible” (Buchanan and Tullock, p.13).

This is the programme seen as positive economics. The normative basis of constitutional political economy, and of public choice theory in general, is that individuals’ stated preferences must be the basis of social values. It follows that any attempt by governments to define and enforce a “public interest” independent of such preferences would amount to a restriction of individual freedom.

As Buchanan later explained the approach to *The Calculus of Consent*: “The framework for analysis was necessarily contractarian, in that we tried to explain the emergence of observed institutions and to provide norms for changes in existing rules by conceptually placing persons in idealized positions from which mutual agreement might be expected” (1975, p.6).

Methodological individualism was incompatible with any attempt to develop a social welfare function. Most famously, in 1951 Kenneth Arrow sought to derive a social ordering which satisfied five fairly non-stringent axioms and had the same consistency properties as individual orderings. He failed, to his own disappointment and to the surprise of many of his fellow-economists, although not to Buchanan’s. The subsequent controversy focussed mainly on the axioms from which Arrow derived his proof and on its details. In a review article in 1954, Buchanan described the whole debate as pointless because of its disregard of individual interest. “Rationality or irrationality as an attribute of the social group implies the imputation to that group of an organic existence apart from that of its individual components” (p.116).

While Arrow showed that no rule could generate consistent collective outcomes from individual orderings, “he neglected any normative reference to the possible coercion of minority preferences or interests in any nonunanimous rule structure” (Buchanan, 1991, p.44). In essence, an organic model of the state could not provide a normative justification for democracy. This could only be derived from the assumptions of individualism, which were incompatible with any notions of organicism. The state is no individual; it consists of them.

In the perspective of methodological individualism, the state exists to satisfy the needs of its members, whoever they might be. Whether evolved or designed, its sole rationale is to meet individual wants. As individuals differ in tastes, capabilities and resources, they have an incentive to enter into exchange relationships with one another. But social interdependence brings with it a cost. Private contracts mean rules, which should ideally be enforced through the voluntary behaviour of individuals. But this will not always be so.

In some cases voluntary action, whether individual or co-operative, will be sufficient to enforce contracts, but in others political action, which must be collective, will be necessary. We are looking at “the relative costs of social interdependence. The costs of organizing voluntary contractual arrangements sufficient to remove an externality or to reduce the externality to reasonable proportions may be higher than the costs of organising collective action sufficient to accomplish the same purpose. Or, both of these costs may be higher than the costs of bearing the externality, the spillover costs that purely individual behavior is expected to impose” (Buchanan and Tullock, p.48).

Ultimately, then, it is a question of the relative costs of the three different types of decision-making: individualistic, co-operative and collective. There is nothing in the nature of things which makes collective decisions less costly than the other varieties, but when they are adopted it is because they can better handle the presence of externalities. Demand considerations are decisive. “The *Calculus*

of *Consent* might be described as an extension of the “theory of public goods,” interpreted in a Wicksellian setting, to political structures and to the formation of decision rules” (Buchanan, 1975, p.7).

Also, unlike much other contractarian theory and indeed Buchanan’s own later book, *The Limits of Liberty*, the starting-point is not a state of nature. The authors do not attempt to explain the origin of property. The contractors already have their property rights. “When mutuality of gain is emphasized, there is less need to be concerned about the initial assignment of “rights” among persons. In *The Calculus of Consent*, we did not find it necessary to go behind the assumption that individuals with more or less well-defined rights exist at the initiation of the contractual process” (*ibid.*, p.8).

Just as the interests of individuals must often differ in market relationships, so do they in political behaviour. Voluntary exchange via the market is a positive-sum game; it yields benefits to all participants. This applies to politics as well. Politics also involves exchange relationships, which is why the state must exist. The gains from co-operation cannot simply be captured by voluntary exchange.

The immediate objection to this line of argument is that politics is about conflict and coercion. It involves an endless series of zero or negative sum games. The analogy with voluntary exchange through the market apparently breaks down.

Buchanan and Tullock respond by distinguishing between two stages of the process of collective decisions. There is the choice between constitutional rules and the conduct of politics within the rules. Constitutional political economy is about the first stage. Utility-maximising individuals have an incentive to reach an agreement, whatever their differences in preferences, abilities and material condition.

Buchanan and Tullock here introduce what is probably the most controversial part of their argument. “In discussing an original constitution or improvements in an existing constitution, we shall adopt conceptual unanimity as a criterion. That is to say, we are concerned with examining proposals that will benefit each member of the social group. There are two reasons for adopting this criterion. First, only by this procedure can we avoid making interpersonal comparisons among separate individuals. Secondly, in discussing decision rules, we get into the familiar infinite regress if we adopt particular rules for adopting rules. To avoid this, we turn to the unanimity rule, since it is clear that if all members of a social group desire something done that is within their power, action will be taken regardless of the decision rule in operation” (pp.14-15).

At first, the unanimity rule appears clearly absurd, and it has often been condemned as such. The dissent of one individual may wreck any agreement, however beneficial it may be to all the other members of the social group. But this is to misconceive the argument, which depends crucially on the two stages of collective decision-making.

Evidently, the costs of reaching agreement may be high. These are decision-making or bargaining costs, which increase with the majority required to pass any measure. But insofar as less-than-unanimity rules prevail those who are made worse off by any decision suffer external costs, i.e. the costs of being in a minority. Under conditions of uncertainty however members of the social group may unanimously agree on rules which do not require unanimous agreement. The point is that as individuals are not aware of how exactly they will be situated under the constitutional dispensation, but nonetheless believe that they will on the whole gain from collective decisions, they will have an incentive to bind themselves unanimously to accept less-than-unanimous rules in the post-

constitutional stage. They will anticipate that although they may be in the minority on certain occasions, they will be in the majority on others. By and large they will benefit, or so they believe.

In the post-constitutional stage then, which may continue indefinitely, substantial deviations from unanimity are quite possible. Simple majority voting may be appropriate in some cases; in others there may be provision for special majorities or even less than majority voting. The costs of reaching decisions will be crucial, as will be the importance of the decisions. There may be no uniform rule, but all this will have been unanimously agreed to at the constitutional level. These different voting rules will be part of the post-constitutional operation of ordinary politics.

Especially novel, from the perspective of the conventional wisdom at the time about democracy, was the demotion by Buchanan and Tullock of majority voting from its sacrosanct status to only one among a number of possible voting rules at the post-constitutional stage. This indeed was the question which inspired *The Calculus of Consent*: “Why should an individual, if he were given the opportunity, ever choose to be governed by the majority voting of his fellows?” (Buchanan, 1979, p.154). The answer, we have heard, is that individuals will unanimously subject themselves at the constitutional stage to less-than-unanimity rules in the post-constitutional stage, as long as they are not certain about their future position under the new constitution. “At best, majority rule should be viewed as one among many practical expedients made necessary by the costs of securing wide-spread agreement on political issues when individual and group interests diverge” (Buchanan and Tullock, p.96).

Now this is not supposed to be a description of what has ever actually happened in history. Buchanan and Tullock describe a hypothetical agreement which can provide criteria for the adoption of constitutional rules and the operation of everyday politics within such systems of rules. What is central to their approach is agreement. They make no independent value-judgements as to what is desirable or not. Whatever emerges from agreement is acceptable, as long as correct procedures are followed. As Buchanan has put it: “we must always accept whatever structure of rules that exists and seek constitutional changes only through agreement, through consensus. It is this inability to say anything about rule changes, this inability to play God, this inability to raise himself above the masses, that the social philosopher cannot abide” (1977, p .84).

2 Constitution-making the American way

Madison and the American constitution

The American constitution which emerged from the Philadelphia Convention of 1787 complied in at least one respect with the scenario envisaged by *The Calculus*. The 55 delegates did not meet in a hypothetical state of nature. All owned property. Instead they were attempting to devise rules of government which were more satisfactory, in some sense, than those which existed under the Articles of Confederation. This has indeed been a matter of some controversy among scholars, i.e., the extent to which the Founding Fathers at Philadelphia were concerned with designing a braver New World for property owners to flourish in.

There was wide agreement about the flaws of the government which had been established under the Articles. After the Revolution the newly-independent states had to face the problem of reconciling popular government and stability. As late as the 18th century it was still “commonly assumed that formal mechanisms of monarchical or at least aristocratic authority were the necessary sources of public order and civilised justice” (McCoy, p.39). In the Confederation these mechanisms no longer existed; the “politics of liberty” prevailed. The only central government was a single-chamber legislature which had no power to tax and depended on the goodwill of the individual states to provide it with funds. Power was at the periphery, concentrated in the states, and, within the states, in the popular legislatures.

Under the Confederation the states had produced plenty of evidence that they could not provide order and stability. The legislatures were highly sensitive to grass-roots pressures. Dominated by men like Patrick Henry, little more than a demagogue to his fellow-Virginian, James Madison, they passed laws which were both numerous and inconsistent, “shifting as rapidly as public opinion and the unstable coalitions of interests in the legislatures” (*ibid.*, pp.40-41). Clamours for debt relief found predictable expression in laws that, Madison claimed, by “wantonly disregarding the rules of property and justice that raised men from savagery to civilised order”, brought republican government still further into disrepute and, in fact, unravelled “the very fabric of civilised society” (quoted by McCoy, P 41).

What emerged from the Philadelphia Convention was a proposed new constitution which would concentrate far more power at the centre than under the Articles. Previously the government had relied on the states for its survival; now it would impose laws and levy taxes directly upon the population. This was perhaps the most important conceptual distinction between the Articles and the Philadelphia proposals. Up to 1787 the political system had been based on the principle that its constituent entities were the separate states; after Philadelphia it was replaced by the principle of legislation for the individual citizens of America. For both Madison and the other main author of *The Federalist*, Alexander Hamilton, individuals and not collectivities were the true objects of government. As Hamilton put it in *Federalist* 15: “The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of which they consist” (capitals in the original). After surveying the history of previous federations, Madison concluded in partly-identical words: “The important truth, which it unequivocally pronounces in the present case, is that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity...” (*Federalist* no.20).

Here is one affinity between the Buchanan-Tullock normative framework and that of the American Constitution. The individual is the basic building-block in both. Collective entities have no organic

existence of their own. Collective action must ultimately be derived from and explained by the decisions and actions of individuals, the ultimate constituents of all political entities.

Under the Articles the legislature had been supreme. After Philadelphia an independent executive, reinforced by a judiciary, would have the authority to enforce the policies of the central government. The powers of the legislature, formerly the only central authority, such as it was, were now severely curtailed. The president would have substantial responsibilities in foreign affairs. He would also be the commander-in-chief of the armed forces, would be responsible for seeing that the laws were “duly and faithfully executed”, and would have a limited veto power over acts of Congress. He would be elected by an electoral college, making him largely independent of Congress. These were drastic changes, so much so that critics of the proposals, the Anti-Federalists as they came to be known, argued that the President would be a refurbished George III, waiting in the wings to establish a familiar tyranny.

This was the most obvious outcome of the Philadelphia Convention, *viz.*, greater centralisation of government. Still, it was not what either Madison and Hamilton had advocated at the Convention. Both had argued for a central authority which would have more substantial powers to veto the decisions of the states. Madison wanted a national government which had a “negative in all cases whatsoever” over the acts of the states. Hamilton had gone much further, advocating a Senate and an executive which served for life, an absolute veto for the executive, and state governments virtually reduced to impotence. For both, the decisions of the Convention were a distinct second-best but still far superior to what had existed under the Articles. It was this second-best which they defended in *The Federalist*.

They did not get their way, because the smaller states did not want it so. In terms of the Virginia Plan, presented at the beginning of the Convention in May 1787 and substantially drafted by Madison, proportional representation would be the basis of representation in Congress. The Articles of Confederation had been based on the principle of “one state, one vote”. Small states like Delaware and Rhode Island had as much individual voting power as large ones like Virginia and Massachusetts. The Virginia Plan proposed to do away with this entirely. Not only would representation be proportionate to population in both houses of Congress, but an indirectly-elected Senate would offset the susceptibility to popular pressures of the directly-elected lower house. A joint executive-judicial Council of Revision was to provide an additional check in the form of a limited veto over all acts of Congress should the Senate itself legislate unwisely.

The Virginia Plan came to nought because the small states made it clear that there would be no new constitution unless it included some equality of suffrage. Their representatives could never explain just what common interest states as diverse as Pennsylvania, Virginia and Massachusetts had in “crushing” the small ones. But they refused to budge, which made inevitable what came to be known as the Great Compromise, adopted after seven weeks of debate.

In terms of the Compromise the House of Representatives would be elected on a proportional basis, reflecting the populations of the individual states (with slaves regarded as constituting three-fifths of free citizens). In the indirectly-elected Senate, states would have equal representation with two senators each.

Once the centralisers realised that their original proposals had failed they came to accept the need for a far stronger executive. Because they were unhappy with the Great Compromise, “a new concept of the Presidency began to emerge” (Rakove, p.36). There was still concern about possible abuse of executive power, yet he was now also regarded by some, in the words of Gouverneur Morris of Pennsylvania, as “the general guardian of the national interests”. As a Stanford historian has

put it, "He would not only carry out the national will as it was expressed by the legislature, but also act independently to define a national interest larger than the sum of the legislators' concerns" (Rakove, p.36).

The President would be elected by an electoral college, making him substantially independent of Congress. He would serve for a four-year term and be eligible for re-election. The Founders, not anticipating the rise of powerful political parties, assumed that the large states would have an advantage in promoting candidates for the Presidency. However, if an election was deadlocked, and it was assumed that this could happen quite often, the final choice would lie with the House of Representatives, with members voting by states. This would maintain both the President's independence from the Senate and the Great Compromise. On September 15, 1787, the delegates, voting by states, endorsed the Constitution. Of the 41 delegates who remained, 38 voted for the proposals and three dissented.

The whole system was permeated with those checks and balances which have come to be seen as the most typical feature of the American constitutional system. The three branches of government were largely, although not completely, independent of one another. The legislature itself was internally divided, the two chambers being chosen on entirely different principles of representation.

The other great compromise was over slavery. It was clear from the outset that Union was only possible if slave owners were assured of their property rights. This was before slavery had become the apparently all-consuming issue of later years, before the invention of Eli Whitney's cotton gin and the huge boost it gave to the expansion of the cotton kingdom. But the slave states, South Carolina and Georgia in particular, were quite willing to stay out of a union which did not guarantee their property rights. And so it happened, representing a compromise between different sets of property owners who had more in common than what divided them. One historian has aptly commented: "America would benefit from a division of labour among its geographical regions of economic expertise, from its potentialities for investment, and from the exploitation of resources. The Constitution would permit those interests to develop without interfering radically with the private arrangements of different sections of the nation" (Pole, p.197).

This was achieved without any mention of slaves or slavery in the Constitution. As Abraham Lincoln was to observe later, the institution was "hid away in the Constitution, just as an afflicted man hides away a cancer which he dares not cut out at once, lest he bleed to death" (quoted by Thernstrom, p.203).

There had been demands for a Bill of Rights, which were overwhelmingly rejected on the grounds that existing provisions in state constitutions were more than adequate in protecting trial by jury and other rights. It was only later, in response to the same demands at state ratifying conventions, that the required guarantees were introduced as constitutional amendments.

Buchanan and Tullock have found much similarity between the outcomes of the American constitutional process and the implications of their own model of constitutional decision-making. "The analysis shows quite clearly that the "ideal" organization of activity may embody many and varying rules for making collective decisions, may involve considerable investment in decision-making costs, may allow considerable administrative authority on certain matters, may be quite restrictive as regards amendments to a written constitution, and may provide quite rigid protections to the so-called inalienable rights".

They do not "suggest that the American experiment in constitutional democracy is the best of all possible worlds", but "in the course of this work the authors have come to appreciate more fully the

genius of the Founding Fathers in the construction of the American system. We do not think that this genius can be wholly separated from its environment, which was also that in which the ideas of economic theory were initially developed. The rather bewildering complex of institutions that makes up the American decision-making system does not seem openly to contradict the fundamental hypotheses of our model. This is the extent to which our constitution serves as a rationalization for what is, or perhaps more aptly stated, what is supposed to be” (pp.300-301). In short, Buchanan and Tullock believe that the process of constitutional design which they portray in *The Calculus*, based on the principle of methodological individualism and the requirement of unanimity, would lead to outcomes very similar to the American constitution finally accepted by the ratifying conventions after the deliberations in Philadelphia.

Individualism, unanimity and the American constitution

In some respects, there is a clear correspondence between the theory of *The Calculus* and the theory implicit in the American constitution. Buchanan and Tullock make the normative assumption that individualism must be the basis for any constitution that would allow the members of society to capture the benefits of collective action. This has its counterpart in the assumption of the new Constitution that individuals and not states were the true objects of government. As for unanimity, clearly this did not happen at Philadelphia, but there was very substantial agreement, obscured by the strong differences of opinion between the representatives of the large and small states. One editor of *The Federalist* has put it as follows: “There was an overwhelming consensus among the delegates...in favour of a strong national government”. The rejection by the smaller states of the original Virginia Plan only amounted to an insistence that their own interests be “maintained within a reconstituted nationalist and centrist government” (Kramnick, p.33). Once they were given an equal vote in the Senate, their resistance vanished. “The mood of the convention...was decidedly in agreement on the need for executive power and authority in the new Constitution” (ibid., p.34). In the real world of the Founding Fathers, the consensus at Philadelphia can arguably be seen as a proxy for the unanimity requirement of Buchanan and Tullock.

In other respects, however, there is such a marked dissimilarity between the model of *The Calculus* and the events at the Convention and, later, those involving ratification that we must question the explanatory power of the Buchanan-Tullock analysis. There may have been “overwhelming consensus” at Philadelphia in favour of a strong central government, but it was a different story at some of the most important state ratifying-conventions.

Ratification by nine of the thirteen states was necessary for the new constitution to come into effect. In the first three states to ratify, Delaware, New Jersey and Georgia, acceptance was unanimous. A historian of the American Revolution has provided an explanation: “States that were highly commercial, that were weak in the existing order, or that had been badly ravaged during the war were likely to favour a strong new government...” (Countryman, p.193). In effect, by setting the agenda and ensuring that these states held their conventions first, supporters of the new Constitution calculated that the initial favourable momentum would persuade the other conventions to ratify as well.

Although 11 of the 13 states had ratified when Washington became President, it was a close-run thing in some of the largest states, where the issue was resolved by simple majority vote. In Massachusetts the victory margin was narrow, 187 votes in favour and 168 against. In New York it was razor-thin, 30 votes against 27. In Virginia it was 89 for and 79 against. Neither North Carolina nor Rhode Island accepted the Constitution.

Also, representation at Philadelphia was selective or non-existent for certain groups. Slaves, of course, had no say in the proceedings. Women were represented by their menfolk. Otherwise, it was the better-heeled members of society who had their say, directly or indirectly, at the Convention. Of

the 55 original delegates, 34 were lawyers, at least 15 were slaveholders, 14 were land speculators, and 24 served in Congress. But in spite of the once-popular thesis of Charles Beard that the activities of the Founding Fathers could be explained in terms of their class interests, the evidence does not support the conclusion that the Federalists were the well-off and their opponents the poorer members of society. Some of the Anti-Federalists were exceedingly rich; many common men were enthusiastic Federalists. All the same, small farmers, the bulk of the white male population were hardly represented at Philadelphia.

Perhaps most important, without majority voting the new Constitution would never have got off the ground. It is true that in Virginia and New York the Constitution was only accepted after the ninth state, New Hampshire, had voted in favour (itself only by a narrow majority), but it is inconceivable that the Union would have been formed, or been viable, in the absence of two such powerful and strategically-located states. Whatever consensus there was in the design and approval of the Constitution was largely a matter of the elite. There were also substantial divisions within that elite. The Buchanan-Tullock construction in *The Calculus of Consent* appears to offer us little understanding of the emergence of the American Constitution. There were superficial similarities between the normative framework of *The Calculus* and Madisonian democracy, notably the stress on the individual as the fundamental unit in representative government and the need for consensus. But on closer investigation these similarities proved just that – superficial.

The fact that something resembling the American Constitution *may* have emerged from the logic of constitutional decision-making elaborated by Buchanan and Tullock does not mean that this is how history did happen. Other processes may lead to the same results. In America they obviously did. It is the positive, and not the normative, theory of public choice which is more likely to help us understand the course of events.

3 James Madison: Father of the Constitution *and* Ancestor of *The Calculus of Consent*?

The real meanings of Madison

Up till now the concept of Madisonian democracy has been taken as a given. Yet it should not be. What it *really* means has been the subject of much scholarly debate. Charles Beard saw Madison as an early economic determinist, a forerunner of Marx, who advanced a class interpretation of the American Revolution in his famous *Federalist* paper no.10. Drawing up the new Constitution at Philadelphia was, it seems, essentially about making America safe for men of property. *The Federalist* has also been explained in terms of federalism, than which nothing could seem more logical. Then there is a pluralist version of *Federalist* no.10, which “presents a vision of a protean society in which factions are endemic; the more the merrier. It also presents a vision of government as an embattled umpire whose principal task is the regulation of factions” (Ericson, p.59).

Disagreements among the scholars have only reflected those among Americans themselves, from the outset, as to the true meaning of the Constitution. Did the states, individually, affirm the Constitution? Or did affirmation come, in principle at least, from the entire people of the United States, as the famous opening words of the preamble, “WE THE PEOPLE”, would seem to suggest? Much could be said, and was, on both sides, with less and less agreement as the 19th century took its course.

Madison himself did little to clarify matters. One historian has referred to his “ambivalence about various constitutional issues, and the fact that he did make contradictory utterances on different occasions” (Kammen, pp.57-8). From the beginning, Madison saw “the nature of the new Union” as a blend of “federal” and “national” principles, pointing out many years later that the United States Government, “being a novelty & a compound, had no technical terms or phrases appropriate to it; and that old terms were to be used in new senses explained by the context” (quoted by Kammen, p.58). After his Presidency, Madison did sometimes write confidential letters explaining what the framers had in mind in 1787, and what bearing the Constitution had on such issues as congressional control of the territories. But it was all a bit unsatisfactory. “Although James Madison richly deserves his sobriquet as father of the Constitution, the perceived impact of his paternity remains enigmatic” (Kammen, p.58).

The ambiguities remain. Fortunately, however, when examining the degree of correspondence between the theory of *The Calculus* and “the theory implicit in the American Constitution”, we do not have to look much further than *Federalist* no.10, for Buchanan and Tullock themselves claim that here is the closest approximation by the Founding Fathers to their own thinking. “There is, in fact, evidence which suggests that Madison himself assumed that men do follow a policy of utility maximization in collective as well as private behavior and that his desire to limit the power of both majorities and minorities was based, to some extent at least, on a recognition of this motivation...A careful reading of this paper suggests that Madison clearly recognized that individuals and groups would try to use the processes of government to further their own differential or partisan interests. His numerous examples of legislation concerning debtor-creditor relations, commercial policy, and taxation suggest that perhaps a better understanding of Madison’s own conception of democratic process may be achieved by examining carefully the implications of the economic approach to human behaviour in collective choice” (p.25).

In this paper Madison addressed himself to the threat posed by factions to the stability of the new state. He defined a faction as “a number of citizens, whether amounting to a majority or minority of

the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community". Madison already knew that men were factious. His experiences of the state legislatures after 1783 were enough to give him an encompassing disdain for the ability and willingness of men to pursue their own selfish interests at the expense of others. But as long as factions were in a minority they could, it seemed, readily be prevented from imposing too much havoc on their fellow-citizens. "The crisis came, for Madison at least, when he was forced to recognise that, under poorly balanced constitutions, the majority itself could be a "faction," willing and imposing policies that were persistently at odds with private rights and long-term needs, and when an armed minority resisted the majority in Massachusetts" (Banning, p.206). This latter event, Shay's Rebellion of 1786, an uprising of debtor farmers in western Massachusetts, was especially disturbing, coming as it did in a state where the constitution had received massive popular consent only six years before. It seemed to cast doubt on the very possibility of popular government, of whether personal liberties could co-exist with a far stronger central government than before.

So in *Federalist* no.10, Madison explained and justified what he saw as the theoretical foundations of the Constitution which had been agreed upon in Philadelphia. A minority faction could still be defeated, but it was different when the faction constituted a majority, enabling "it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed". Accepting that the sources of faction, of which the "most common and durable" was "the various and unequal distribution of property", could not be removed, Madison argued that relief was "only to be sought in the means of controlling *its effects*".

This was to be achieved by enlarging the state, by converting it into an extended or "compound republic". Previously republics had been seen as governments where citizens met in person to make decisions on affairs of state. Madison now annexed this term with its favourable connotations to give it a very different meaning.

"The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended".

The effect of the first difference would be "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interests of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations". The working of the refinement principle would be reinforced by the effects of a more extended country with a larger and more diverse population. "Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other".

In short, the rivalry of factions in an enlarged republic would limit the ability of any one faction or combination of factions to damage the public interest. A historian of economic liberalism has found "an analogue in the rivalry of firms for economic power". He concludes, "competition is the method of maintaining and also of controlling rivalry in both its economic and political aspects. The *Federalist* conception of political competition is analogous to the conception of economic competition in classical economics" (Grampp, vol.1, p.122).

The analysis of *The Federalist* had obvious resonance with orthodox economics, which would help to explain its appeal to Buchanan and Tullock. Most important, perhaps, there is the individualistic assumption about human behaviour, viz., that individuals are the fundamental units in any political association. Appropriate incentives to self-interested individuals would then provide the political and economic rivalry necessary for preserving the extended republic. As Madison put it in one of his most famous pronouncements: "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place... This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public" (*Federalist* no. 51).

An enlarged republic, properly designed so that factions could not act in ways inimical to the public interest, was then Madison's solution for the ills which afflicted the Confederation. "In the extent and proper structure of the Union, therefore, we behold a republican remedy for the disease most incident to republican government" (*Federalist* no.10).

So far, it appears as if the normative framework of the American Constitution, as expounded in *The Federalist*, differs little from that expounded in *The Calculus of Consent*. There are clear similarities. Presumably it is these which led Buchanan to credit Madison with so clear an understanding, so lacking among economists today, of "the relations between the institutions of voluntary exchange, the choice among constitutional rules, and the operation of ordinary politics within such rules" (1991, pp.48-49). Yet this judgement is essentially ahistorical; it ignores aspects of the ratified Constitution and pronouncements in *The Federalist* which cannot be so readily accommodated within the analytical frameworks of 20th century economists and political scientists.

There is, for instance, the federal view of the 1787-88 Constitution, which appears most consistent with the model developed by Buchanan and Tullock. Reviewing a public choice interpretation of *The Federalist*, Richard Wagner, one of Buchanan's several co-authors, has argued that "It is surely noteworthy that the 85 essays penned by Hamilton, Madison, and Jay were titled *The Federalist*, for in so doing those authors placed federalism at the core of the American constitutional order". But then Wagner himself goes on to point out that there is "some disagreement among scholars as to whether it was reasonable to refer to the American constitutional order as federalist, for in the 18th century federalism was understood synonymously with confederation" (p.189).

In his *The Shaping of American Liberalism* David Ericson has emphatically rejected this particular interpretation of *The Federalist*. Accepting that "Federalism does play some role in both papers ten and fifty-one", Ericson suggests that this may "need be nothing more than administrative decentralisation... The main point, though, is that a strong commitment to federalism would undercut the rhetorical force of these papers, which is to make the case for large-scale over small-scale governments of equal powers" (p.199).

Although Madison was to change his mind later, when he made his contributions to *The Federalist* he was insistent that central authority should have the right to overrule local authorities. He had of course been bitterly disappointed with the concessions which had been made to the small states during the Convention and the rejection of the Virginia Plan, which he had so largely drafted. And as he was to put it in no. 44, the central authority should have the power to "make all laws which shall be necessary and proper".

The other main contender in the interpretation of *The Federalist* has been pluralism. This sees the new Constitution in terms of the conflict of interest groups, or factions, which should have free play to express the will of the people. The public interest would then be reflected in the resolution of group conflict, which happens as a multiplicity of interest groups contend with one another in the

political and economic market-place. Private liberty takes precedence over public liberty, which is not an end in itself. This would appear to be confirmed by Madison's contention in no. 51 that the Constitution would compensate for "the defect of better motives" by devising institutions that would offset "opposite and rival interests".

The trouble with these interpretations is that they do not consider Madison, *The Federalist* and the Philadelphia Convention in their historical context. Madison and the other Founding Fathers were no believers in any kind of constitution, as long as it emerged from "appropriate" procedures. They were strongly imbued with notions of civic virtue, long current in the 18th century. What had happened after the defeat of the British and the usurpation of power by the state legislatures represented to Madison a defeat of "virtue" and the triumph of faction, "adverse to the rights of other citizens, or to the permanent and aggregate interests of the community".

When drawing up the Constitution, and in the writing of *The Federalist*, the Founding Fathers had powerful notions about what a republican government should look like. Virtue played a central role in their thinking. One of the leading historians of this period has put it succinctly, "When Madison insisted on the indispensability of virtue, he plainly meant... a certain deference by the many to the few: a recognition of and a preference for the public-minded, wiser men who were best qualified to lead" (Banning, p.207). Here Madison's notion of representation as refinement became crucial.

During the 18th century, republicanism had acquired a special meaning in political debate. In a republic, public liberty took precedence over private liberty. Civic virtue was the essential feature of good citizenship and was reflected in the willingness of citizens to sacrifice their own interests for the public good. There was a substantial degree of equality between citizens, who were judged fit to participate actively in politics and to vote wisely for officials of their choice. A republic was supposed to be small, making for a homogeneous citizen body and a government close to the people, giving greater scope for civic virtue through political participation.

Madison and his colleagues took over a good deal of this ideology, but proceeded to modify it for their own purposes. Madison's great innovation was to redefine a republic as an extended unit, but this was to protect private rights from the selfish behaviour of factions, the peculiar vice of smaller republics. He too believed that public liberty should not be sacrificed to the pursuit of private interest. Ideally, "enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good" (*The Federalist*, no.10).

Although public officials were to be representative of the citizen body and were to be elected, for Madison "the point of republican government was not to give the people what they want, but to do the right thing" (Sandel, p.131). The refining principle would, ideally, place power in the hands "of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations" (*The Federalist*, no.10).

This is all a long way from what Buchanan and Tullock were talking about in *The Calculus*. It has to be, given their individualist assumptions. "Agreement among all individuals in the group upon the change becomes the only real measure of "improvement" that may be accomplished through change" (Buchanan and Tullock, p.7). As they "explicitly rejected the idea of an independent "public interest" as meaningful" (p.13), acceptable procedures were decisive to them. There were no objectives independent of unanimous agreement within the group. In his later works, Buchanan was fond of denying any inclination or right to superior knowledge or wisdom: "the individualist is forced to acknowledge the mutual existence of fellow men, who also have values, and he violates his precepts at the outset when and if he begins to assign men differential weights. He simply can-

not play at being God, no matter how joyful the pretence; hubris cannot be descriptive of his attitude" (1975, p.1).

Madisonian democracy and the economic approach

The historical evidence suggests that the claims for a resemblance between the normative theory of the economic approach elaborated in *The Calculus* and the theory implicit in the American Constitution should not be exaggerated.

Most obviously, the procedures followed in Philadelphia and at the ratification conventions little resembled those expounded by Buchanan and Tullock as the proper way to go about constitution-making in an individualist way. The Philadelphia Convention represented at best only the most affluent and best-educated members of white male society. Slaves, women, small farmers, and debtors were, to varying degrees, disregarded in the making of the Constitution.

Not only was the unanimity rule of no account, Madison and his fellow-Federalists were not averse to playing God. They accepted the principle of representation, but were no blind believers in giving power to the people. They were sure that the many should defer to the few who had superior wisdom and were committed to the public good.

At the ratifying conventions, straight and exceedingly narrow majority decisions were decisive in some of the most important states, New York and Virginia in particular. However maligned as decision-making rules in the public choice literature, without majority voting at the initial constitution-making stage the history of America would have taken a different turn.

In short, the differences between the normative framework of *The Calculus of Consent* and that of the American Constitution were considerably greater than the similarities. Had anything resembling the Buchanan-Tullock criteria for constitution-making prevailed at Philadelphia there would have been no United States. The affinities Buchanan and Tullock found between their approach and the proceedings at Philadelphia and after were not sufficient to make the outcome anything but illegitimate in terms of their own criteria.

The eventual adoption of the Constitution is readily explicable in terms of positive public-choice analysis. The supporters of the Constitution were better organised than their opponents. It would have been surprising had they not been. The merchants, lawyers and other professionals who were Federalists tended to be wealthier, better educated, and urbanised. Small subsistence farmers from the interior constituted the core of Anti-Federalism. Nor were the Federalists especially scrupulous in their methods. They bought up nearly all the newspapers in the states and had no apparent qualms about not covering the arguments of their opponents.

Even so, it was a close contest, which might have ended differently had the supporters not finally agreed to add a bill of rights to the Constitution after it had been ratified. Also, in spite of all the public discussion and excitement, voter turnout was surprisingly poor. "Perhaps the most striking thing about the struggle over ratification was the passivity of the general public. Barely a quarter of those eligible to vote bothered to go to the polls. Most Americans neither desired nor feared a stronger national government; they were simply indifferent, absorbed in personal and local concerns...Ratification was a matter of deep interest only to the politically conscious minority" (Thernstrom, p.206).

In spite of such widespread apathy at the time, scholars have tended to believe that the Constitution soon established itself with an iron hold on the hearts and minds of Americans. As a leading authority on the period, the historian Lance Banning, has expressed this view: "The quick apotheosis of

the American Constitution was a phenomenon without parallel in the western world. Nowhere has fundamental constitutional change been accepted with so much ease. Nowhere have so many fierce opponents of the constitutional revision been so quickly transformed into an opposition that claimed to be more loyal than the government itself" (quoted by Kammen, p.46).

Yet it seems that the amount of consensus may have been exaggerated. The historian Michael Kammen has disagreed with the orthodoxy: "After examining diverse sources, however, my own conclusions are somewhat different...I do not see a strong constitutional consensus emerging almost from the start". Kammen found "complaints about disloyalty to the Constitution..., and expressions of hostility verging upon denunciation." (p.46)

The picture that emerges of the Constitution in the early days of the United States is of a document that was only accepted after bitter opposition and a process that ignored, entirely or virtually, substantial sections of the population. And, whatever the constitution-worship of later years, in the beginning many found it difficult to accept a dispensation they believed was foisted upon them.

4 What then was Madisonian democracy?

This is not an easy question to answer. At least we can say what it was not. It emerged from a process which bore little resemblance to the logic of constitutional choice expounded by Buchanan and Tullock. Unanimity, even in the form of a proxy such as consensus, was not the norm. The Founding Fathers, including Madison, had strong notions about who were best qualified to rule and did their best to design a constitution which would allow the “virtuous” to govern. The extended republic was supposed to facilitate rule by enlightened statesmen who believed they knew what was the public good.

While Madison may well have been the “Father of the Constitution”, he was, at best, only a remote forefather of the Buchanan-Tullock intellectual construction.

The Constitution was in fact a hybrid. To a large degree it reflected 18th century notions about virtue and the pursuit of public, as against private, liberty. It was reflected in the capture by the authors of *The Federalist* of such “good” terms as “federalism” and “republicanism”, previously associated with decentralised, small-scale government, and the conferring on them of a meaning more in keeping with the centralising purposes of the Founding Fathers. But, while allowing a substantial shift of power to the centre, the Constitution was unmistakably federal in the sense in which it has come to be accepted today. The state governments had their own spheres of jurisdiction which could not be abolished by the authority at the centre. Also, despite Madison’s hostility to “factions”, his acceptance of them as necessary evils meant that interest-group pluralism unavoidably featured in the new system.

Above all, the American republic was based on a separation of powers, between the state and federal governments, between the organs of governments, and even within legislatures. Ultimately, power was derived from the citizens, who expressed their will at periodic elections, however much Madison and his fellow-founders believed that American citizens should be represented by enlightened and public-spirited men such as themselves. Free and regular elections and constitutional constraints were what the American system was about.

How much of a watershed was the adoption of the new Constitution in American history? It is tempting to regard it as truly a decisive event. So, in a sense, it was. But the changing of a constitution, however drastic, does not automatically alter the course of a country’s history. We only have to look at the quite different outcomes from the adoption of U.S.-inspired constitutions in many Latin American countries after they got rid of Spanish rule in the 19th century. It must be seen in the context of the previous history of the various countries.

Douglass North has often compared the different post-colonial fates of the two Americas: “In the case of the United States, the Constitution embodied the ongoing heritage of first British and then colonial economic and political policies complemented by a consistent ideological modelling of the issues. In the case of Latin America, an alien set of rules was imposed on a long heritage of centralised bureaucratic controls and accompanying ideological perceptions of the issues. In consequence, Latin American federal schemes and efforts at decentralisation did not work after the first few years of independence” (p.103).

In effect, the American Constitution found a receptive environment for its operation. Had the Articles of Confederation remained, we can surmise that the American future would have been something else. We can conceive of a collection of essentially separate states, often economically hostile to one another, many dominated by faction-ridden legislatures and highly responsive to redistribu-

tive pressures from below. That at least is one plausible scenario. By contrast, the new Constitution provided a structure of incentives which made possible economic development based on a rapidly-growing internal market. It did amount to a watershed. But it needed that hospitable environment which the former Spanish American colonies did not have.

Of course there were victims. It was inherent in Madison's famous definition of factions as consisting of "citizens" who acted in ways adverse to the interests of the community. The slaves could never behave in this manner, because they were not citizens. It was an issue which the founders deliberately ignored at Philadelphia. For them Union was more important than slavery, which they hoped, Madison included, would somehow disappear one day. It was an issue for posterity, which did not resolve it too well.

Madisonian democracy, as it was elaborated in 1787 and 1788, was inherently incapable of accommodating the continued existence of a large subject population. In this respect, at least, it was entirely consistent with the normative framework Buchanan and Tullock expounded in *The Calculus of Consent*.

References

- Banning, L (1988) Some second thoughts on virtue and the course of revolutionary thinking, in *Conceptual change and the constitution*, Ball, T and Pocock, JGA (eds), University Press of Kansas.
- Buchanan, JM (1954) Social choice, democracy, and free markets, *Journal of political economy* 62: 114-23.
- _____ (1975) *The limits of liberty: Between anarchy and leviathan*, University of Chicago Press, Chicago.
- _____ (1977) *Freedom in constitutional contract: Perspectives of a political economist*, Texas A&M University Press.
- _____ (1979) *What should economists do?* Liberty Press, Indianapolis.
- _____ (1991) *The economics and the ethics of constitutional order*, University of Michigan Press, Ann Arbor.
- _____ and Tullock, G (1962) *The calculus of consent* University of Michigan Press, Ann Arbor.
- Countryman, E (1987) *The American revolution*, Penguin, London.
- Ericson, DF (1993) *The shaping of American liberalism*, The University of Chicago Press, Chicago.
- Grampp, WD (1965) *Economic liberalism*, Random House, New York.
- Kammen, M (1987) *A machine that would go of itself: The constitution in American culture*, Alfred A Knopf, New York.
- McCoy, DR (1989) *The last of the fathers: James Madison and the Republican legacy*, Cambridge University Press, Cambridge.
- Madison, J, Hamilton, A, and Jay, J (1987) (first published 1788) *The Federalist papers*, Kramnick, I (ed), Penguin, London.
- North, DC (1990) *Institutions, institutional change and economic performance*, Cambridge University Press, Cambridge.
- Pole, JR (1973) *Foundations of American Independence, 1763-1815*, Fontana/Collins, London and Glasgow.
- Rakove, JN (1988) Birth of a nation, *Dialogue* 1: 32-37 (from *The Wilson Quarterly*, 1987).
- Sandel, MJ (1996) *Democracy's discontent: America in search of a public philosophy*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts.
- Thernstrom, S (1989) *A history of the American people* (second edition), Harcourt Brace Jovanovich, Orlando, Florida.
- Wagner, RE (1989) Constitutional order in a federal republic, *Public Choice* 61: 187-92.