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Source: *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift für die gesamte Staatswissenschaft*, December 1992, Vol. 148, No. 4 (December 1992), pp. 655-674

Published by: Mohr Siebeck GmbH & Co. KG

Stable URL: <https://www.jstor.org/stable/40751557>

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## The Public Choice Theory of John C. Calhoun

by

ALEXANDER TABARROK and TYLER COWEN\*

Who will join me in offering to make a small contribution to the  
Texas Nationalist Party? Or to the Nantucket Separatists?

James BUCHANAN [1987, 274]

### *Abstract*

We treat John C. Calhoun as a precursor of modern public choice theory. Calhoun anticipates the doctrine of public choice contractarianism as developed by Buchanan and Tullock and expands this approach in original directions. We consider Calhoun's theory of why democracy fails to preserve liberty and Calhoun's suggested constitutional reform, rule by unanimity. We also draw out parallels between Calhoun and Hayek with regard to theories of social change and Hayek's analysis of "why the worst get to the top." The paper concludes with some remarks on problems in Calhoun's theory. (JEL: B 31, D 72, D 79)

### *1. Introduction*

John C. Calhoun's writings on political philosophy anticipate the public choice revolution in modern economics and political science. Calhoun's *Disquisition on Government* and other works offer a comprehensive theory of the proper role and limits for government; this theory covers rent-seeking behavior, the incentives created by voting rules, the character of political leaders, how social change occurs, and other issues. Calhoun both anticipates the general principles of public choice theory and develops an original strand of this theory.

Although Calhoun is commonly considered one of the most important American political philosophers of his time, he has received little attention from

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\* The authors wish to thank Jerry Ellig, Kevin Grier, Rudolf Richter, Jeremy Shear-mur, an anonymous referee, and seminar participants at George Mason University for useful comments.

economists. We attempt to remedy this gap in the literature by examining Calhoun's approach to government from an explicit public choice perspective.<sup>1</sup>

Public choice approaches to politics can be found in most classical political philosophers, to varying degrees. A short list of relevant names would include Aristotle, Hobbes, Hume, Jefferson, Madison, Condorcet, Montesquieu, de Tocqueville, and Wicksell. Calhoun's importance lies not in his public choice approach per se, but in his thoroughness and consistency in the analytics of his public choice approach. Of the names mentioned above, for instance, only Wicksell, Calhoun's successor, has similarly close affinity to the analytic substance of modern public choice theory.<sup>2</sup>

With respect to normative conclusions, the general flavor of Calhoun's writings resembles the ideas of several Jeffersonians from Virginia; specifically, St. George Tucker, Spencer Roane, and John Taylor (see BENNETT [1964, 108–122]). These writers favored states' rights, and were skeptical of both democracy and centralized power. None of the Jeffersonians, however, provided the clarity and rigor of Calhoun's analysis. These writers focused on polemics, whereas Calhoun developed what we now call a "rational choice" approach to the analysis of constitutional government. Furthermore, the Jeffersonian arguments stressed natural rights, a concept which Calhoun rejected.

## 2. *Background of Calhoun's Life and Works*

John C. Calhoun (1782–1850) was born in South Carolina of Scotch-Irish Calvinist parentage. He attended Yale College and later law school; in both cases he was taught by advocates of states' rights and the right of secession (BEITZINGER [1972, 379–380]). Most of Calhoun's career was spent in public service. His work in government began in 1807 and ran almost continuously until his death in 1850. He spent 22 years as a member of Congress (first as Representative and then as Senator), nearly eight years as Secretary of War (1817–1825), seven years as vice-president (1825–1832), and one year as secretary of state (1844–1845), (BENNETT [1964, 128–129]).

Calhoun's later ideas in political philosophy were not evident when he was elected to the House of Representatives in 1811. Calhoun supported the War

<sup>1</sup> Evaluations of Calhoun's political theory (by non-economists) ranging from "hopelessly inconsistent" (William Freehling) to "the major key to the understanding of American politics" (Peter Drucker) can be found in THOMAS [1968]. SPAIN [1968] provides the standard introduction to Calhoun's political philosophy. ARANSON [1991] is the only commentator who approaches Calhoun from a public choice perspective. While we focus upon explaining and evaluating Calhoun as a political philosopher and public choice theorist, Aranson analyzes changes in the political system during Calhoun's career to better understand the roots of his philosophy and political actions (see also note 3).

<sup>2</sup> On the public choice contributions of some of these other writers, see BUCHANAN and TULLOCK [1962, appendices I, II], KAVKA [1986], and WADE [1987].

of 1812 and after the war he voted for protectionist tariffs, public works (canals and highways), and the Second Bank of the United States. Beginning around 1822, however, Calhoun's views began to shift and by the end of his career he was denouncing war, the tariff, public works programs, and no longer supporting the Second U.S. Bank.<sup>3,4</sup>

Towards the end of his career, Calhoun wrote his two political treatises, the *Discourse on the Constitution and Government of the United States* and most importantly the *Disquisition on Government*. These two works were published posthumously. Earlier in 1828, Calhoun wrote "*The South Carolina Exposition*," which defended the right of states to nullify federal laws.

### 2.1 South Carolina: Nullification in Theory and Practice

Calhoun's first attempt to limit the power of federal government dates from the well-known constitutional crisis over South Carolina. In 1828 the most protectionist tariff in America's history to date was enacted into law. Southerners, who had by this time turned against protectionism, called it the "Tariff of Abominations." In South Carolina there was serious talk of secession (CURRENT [1963, 12]). Calhoun sympathized with the secessionists but he wanted the union maintained. As a compromise he advocated the idea of nullification. In essence, nullification was simple: the union was a contract among the sovereign states, therefore each state had a right to declare null in that state any law it deemed unconstitutional. Despite its name, Calhoun's concept of nullification was intended to be more than a negative power. Nullification was to be part of the republican process of debate and compromise used to reach consensus, and thus an extension of "checks and balances," rather than a threat of secession.<sup>5</sup>

The doctrine of nullification had been invoked by Jefferson and Madison in their response to the Alien and Sedition Acts, and reflects earlier ideas put forth by the anti-Federalists (see MASON [1964]). Nonetheless, it was Calhoun who made nullification a political force with his anonymous pamphlet of 1828, "The

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<sup>3</sup> It is still unknown why Calhoun changed his views so drastically. Nonetheless, the views of Calhoun's family, early friends, and teachers were strongly pro-states' rights (CAPERS [1960, 4], COIT [1950, 6]). The real puzzle is why Calhoun was ever a nationalist. ARANSON [1991] argues that when seen in the light of modern public choice theory, Calhoun's thoughts and actions were not inconsistent. CURRAT [1963, 10–12] argues that Calhoun's change was motivated by the changing economic position of South Carolina. Originally it had seemed that South Carolina would grow into a manufacturing state and thereby benefit by the tariff but this failed to occur and the South Carolinians changed their protectionists views.

<sup>4</sup> TABARROK [1992] discusses Calhoun's extensive role in Jacksonian banking and monetary policy.

<sup>5</sup> William SUMNER's [1899, 254–255] opinion of nullification is extreme but not unrepresentative. He writes that "Nullification is jacobinism. It is revolution made a constant political means..." On nullification as part of the checks and balances system see WILSON's [1959] introduction to *The Papers of John C. Calhoun*, Vol. XII.

South Carolina Exposition.” In the exposition he argued for three propositions. First, the tariff was unconstitutional. Second, the states being sovereign had a legal right to declare it so. Third, the people of South Carolina, secure in their rights, should hold off for the time being to give Congress time to recognize and rectify its mistake. The essay had its effect and the secessionists became “Nullifiers.”

By 1831 Calhoun’s Presidential prospects appeared dim and the tariff revision of 1832 lowered the rates only slightly (CURRENT [1963, 14–16]). With little to lose Calhoun went public with the Nullification doctrine, first in 1831, and then even more strongly with his Fort Hill Letter of 1832. Buoyed by Calhoun’s position as vice-President, the South Carolina Nullifiers gained control of the state legislature and declared all tariff acts null and void. Calhoun then took the extraordinary measure of resigning from the vice-Presidency. Calhoun thought he could better present South Carolina’s position from the Senate to which he had just been elected.<sup>6</sup>

The doctrine of Nullification found little support. President Jackson issued a proclamation to the people of South Carolina which declared nullification grounds for treason. In Congress a bill to authorize the use of force against South Carolina and the Nullifiers began to be debated. Calhoun rose on the Senate floor to defend the doctrine of Nullification and to declare the so-called Force bill unconstitutional – but he received little support.<sup>7</sup>

The South Carolina experience may have taught Calhoun that an effective veto power cannot come from outside the ordinary process of government. The power to veto had to be made part of standard government procedure and embodied in a coherent constitutional structure. These thoughts encouraged Calhoun to develop his theory of political economy.

### 3. *Political Economy: Foundations*

In this section we focus upon the positive foundations of Calhoun’s thought, rather than his normative framework; we criticize Calhoun’s normative theory in the paper’s concluding remarks. As we argue below, Calhoun’s contributions are in the realm of positive analysis.

<sup>6</sup> HOFSTADTER’s [1958] documentary history of the United States contains South Carolina’s Protest Against the Tariff (Part V, Document 6) followed by Calhoun’s Fort Hill Address, Andrew Jackson’s Proclamation to the People of South Carolina, and South Carolina’s reply to Jackson’s Nullification Proclamation. On the episodes of this period more generally, see WILTSE [1949, 83–121, 153].

<sup>7</sup> A compromise of sorts was later reached. On the same day that Jackson signed the Force bill he also signed a bill drastically reducing tariffs over a 10 year period. Thus satisfied, the South Carolina Nullifiers repealed their nullification of the tariff but not before defiantly declaring the Force bill null and void.

The foundation for Calhoun's analysis of political constitutions is man's nature. Man, Calhoun argues, is by nature a social being his "inclinations and wants, physical and moral, irresistibly impel him to associate with his kind... (2)." <sup>8</sup> Furthermore, following Aristotle, Calhoun argues that only in a social state man can achieve "a full development of his moral and intellectual faculties (2)." But man is also a self-interested being: he "feel[s] more intensely what affects him directly, than what affects him indirectly through others; or, to express it differently ... his direct or individual affections are stronger than his sympathetic or social feelings (2-3)." <sup>9</sup>

Following Hobbes, Calhoun asserts that self-interest is an "essential law of animated existence (4)," which applies to all life forms. Furthermore, Calhoun argues that man is by nature self-interested because his reasoning powers are fallible and limited. If men were more altruistic, chaos would ensue because it is impossible for beings of limited reason, such as man, to know exactly how best to help one another. He writes that if men cared more for others than themselves (or at least as much) then:

...all individuality would be lost; and boundless and remediless disorder and confusion would ensue. For each, at the same moment, intensely participating in all the conflicting emotions of those around him, would, of course, forget himself and all that concerned him immediately, in his officious intermeddling with the affairs of others; which, from his limited reason and faculties he could neither properly understand nor manage. Such a state of things would, as far as we can see, lead to endless disorder and confusion... (6).

A benevolent government in this situation, if it could do anything at all, should encourage selfishness and discourage altruism (6). <sup>10</sup>

Man's social nature implies that he must live in a social state. However, his self-interested nature implies that a social state "cannot exist without government" because the clash of self-interested individuals leads to the Hobbesian jungle a "universal state of conflict" composed of "suspicion, jealousy, anger and revenge, – followed by insolence, fraud and cruelty (4)." Men need a controlling force – a government.

"But government, although intended to protect and preserve society, has itself a strong tendency to disorder and abuse of its powers, as all experience

<sup>8</sup> All Calhoun citations are to the *Disquisition* [1943] unless otherwise noted.

<sup>9</sup> Calhoun emphasizes that his statement of man's nature is a positive and not a normative statement. He does not deny that there are instances, growing out of relations like that between mother and infant, in which social feelings overpower self-interest. But the exceptional nature of these relations emphasizes the "general" quality of the self-interest assumption.

<sup>10</sup> HAYEK [1988, 18–19, 81 and *passim*] has similarly argued that altruism is an atavistic moral philosophy which had survival benefits in primitive, tribal societies but is inappropriate in an age when man's survival and prosperity depend upon an extended order which can only be sustained through self-interested and impersonal action.

and almost every page of history testify (7).” Self-interested behavior is ubiquitous; it describes the actions of all men including the administrators of government. The task of political science is to resolve this paradox: men need government because they are self-interested but for this same reason government has a tendency to grow corrupt and become a tool of aggrandizement, oppression, and abuse (8–9).

James Buchanan has also described his task as finding a balancing point “between anarchy and leviathan.” Anarchy, however attractive as an ideal, is a “conceptual mirage” because “there are limits to the other-regardingness of men.” In a state of anarchy “personal conflict would be ubiquitous... (BUCHANAN [1975, 6]).” Yet, as in Calhoun, the recognition of governments necessity raises the age-old question of who will guard the guardians? For both Buchanan and Calhoun the answer does not lie in assuming a higher power (e.g., BUCHANAN [1975, 13], CALHOUN [1943, 9]). Both Calhoun and Buchanan give examples of tools that societies have used to restrain governments including religion, superstition, and education as well as institutional devices like the separation of powers and suffrage (democracy). Yet neither believes that the problem of constraining government has been solved (BUCHANAN [1975, 13], CALHOUN [1943, 8]).

#### 4. *Failure of Democracy to Preserve Liberty*

Democracy, for both Calhoun and Buchanan, is one of the most important means of curbing government’s tendency to oppression, but democracy is in no way sufficient. Calhoun writes that suffrage is the primary principle but “it would be a great and dangerous mistake to suppose, as many do, that it is, of itself, sufficient to form constitutional government (13).” Buchanan concurs, writing that the “monumental folly of the past two centuries has been the presumption that, so long as the state operates in accordance with democratic procedures...the individual does, indeed, have insurance against exploitation... (BUCHANAN [1989, 55]).”

Democracy (universal suffrage and majority voting) fails to preserve liberty for at least two reasons. First, as Calhoun notes, majority voting (which he calls the numerical majority) “regards numbers only, and considers the whole community as a unit, having but one common interest throughout; and collects the sense of the greater number of the whole, as that of the community (28).” As a consequence “such a government, instead of being a true and perfect model of the people’s government, that is, a people self-governed, is but the government of a part ... the major over the minor portion (30).” The government of the numerical majority has a tendency to abuse its powers at least as great as the potential for abuse in an aristocracy or monarchy.

Calhoun’s class theory emphasizes the distinction between those who benefit from state activity on net, and those who pay the costs. Individuals are divided



into two classes, tax producers and tax consumers. Even if everyone in society were alike in every way, (“in every respect, so situated, as to be without inequality of condition or diversity of interest (17)),” the presence of government itself would still create classes.

What the one takes from the community, under the name of taxes, is transferred to the portion of the community who are the recipients, under that of disbursements. But as the recipients constitute only a portion of the community, it follows, taking the two parts of the fiscal process together, that its action must be unequal between the payers of the taxes and the recipients of their proceeds... The necessary result... is to divide the community into two great classes; ... taxpayers and tax consumers (19, 21).

Calhoun developed ideas similar to modern theories of rent-seeking and log-rolling. He writes that the existence of “honors and emoluments” is enough to “excite profoundly the ambition of the aspiring and the cupidity of the avaricious; and to lead to the formation of hostile parties, and violent party conflicts and struggles to obtain the control of the government (18).” Even “If no one interest be strong enough [to obtain a majority] ... a combination will be formed between those whose interests are most alike; – each conceding something to the others, until a sufficient number is obtained to make a majority (16).” In such cases “one portion of the community may be crushed, and another elevated on its ruins (22).” This is why government must be limited – “to prevent any one interest, or combination of interests, from using the powers of government to aggrandize itself at the expense of the others (24).”

Having established that majoritarian democracy fails to limit government predation, Calhoun turns to two other possible limiting measures, written constitutions and the separation of powers. He concludes that these measures are also insufficient to secure liberty. Calhoun’s analysis implicitly addresses the defenses of the American system of government offered by Madison, Hamilton, and Adams.

Written constitutions are useful and admirable things but it is a “great mistake” to suppose that mere paper will restrain the majority party from abusing its power. For a constitution to be effective the oppressed need some means of enforcement (52). Calhoun notes that a strict constructionist reading of the constitution is futile. At first such strict constructionism,

... might command some respect, and do something to stay the march of encroachment; but they would, in the progress of the contest, be regarded as mere abstractionists: and indeed, deservedly, if they should indulge the folly of supposing that the party in possession of the ballot-box and the physical force of the country, could be successfully resisted by an appeal to reason, truth, justice, or the obligations imposed by the constitution (33).

Over time, if the constitution is not actually abandoned, it will be subverted and watered down by “liberal” readings until little remains and it effectively becomes annulled (33–34).



Calhoun also attaches little weight to the separation of powers as a means of limiting the potential for governmental abuse. The checks and balances entailed in different branches of government were a primary focus of early American writers on politics.<sup>11</sup> Calhoun favors the presence of checks and balances as a device to bring more thought and deliberation to government. Nonetheless, the separation of powers is a powerful limiting principle only when the separate parts of government have independent power bases in society that are reflected in the constitution (34).

In his *Discourse*, CALHOUN [1968, 181–183] argues that the American system of checks and balances is an imperfect attempt to implement government by concurrent majority. The presence of two houses of Congress, one based upon population and the other giving equal power to each state, for instance, ensures that more than a numerical majority is needed to pass legislation. The presence of a Presidential veto or court ruling of unconstitutionality places further limits upon the legislative process. Calhoun, however, sees these safeguards as imperfect; we should instead adopt a more direct and binding form of the concurrent majority principle (see further below).

#### 4.1 Calhoun's Road to Serfdom

Calhoun sees democracy as leading to an eventual breakdown of order and prosperity. A small, poor nation may be suitable for majoritarian democracy because the system is simple and, since the nation is poor, there is little motive for the abuse of power (43). But, when the population and size of country increase, the people become more diverse and (“above all”) when “the revenues and expenditures become large, – governments of this form must become less and less suited to the condition of society (43).” With increased wealth the gains from the abuse of power grow larger and society becomes split into two great parties who “settle down into a struggle for the honors and emoluments of the government (40).” To succeed each party must be united and therefore to ensure victory each party must

... concentrate the control over its movements in fewer and fewer hands... [this] must lead to party organization, and party caucuses and discipline; and these, to the conversion of the honors and emoluments of the government into means of rewarding partisan services, in order to secure the fidelity and increase the zeal of the members of the party (41).

In this way majoritarian democracy leads to control by a minority and not control by the majority “where the theory of this form of government vests it (41).” This power elite (in both the parties) will be able to maintain control (vis-a-vis the people) by resorting to lies, deception and demagoguery. Calhoun notes:

<sup>11</sup> See the HAMILTON, MADISON, JAY and EARLE [1941] and ADAMS [1971].

For, as the community becomes populous, wealthy, refined, and highly civilized, the difference between the rich and the poor will become more strongly marked; and the number of ignorant and dependent greater in proportion to the rest of the community... and, as the poor and dependent become more numerous in proportion, there will be, in governments of the numerical majority, no want of leaders among the wealthy and ambitious, to excite and direct them in their efforts to obtain the control (46).

Each of the two parties in Calhoun's system relies upon demagoguery to maintain its power when in power, but there is no equilibrium position. "Neither [party] would be able to retain power beyond some fixed term; for those seeking office and patronage would become too numerous to be rewarded by the offices and patronage at the disposal of the government; and these being the sole objects of pursuit, the disappointed would, at the next succeeding election, throw their weight into the opposite scale, in the hopes of better success at the next turn of the wheel (42)." In modern terms Calhoun is describing a political system with an empty core. The two parties in his system continue to vibrate back and forth in chaos and anarchy until a dictator emerges to reestablish control (43).

Calhoun's theory can be understood as a precursor to the theory of minimum winning coalitions developed by RIKER [1962]. Riker models politics as a zero sum game in which parties compete for power.<sup>12</sup> To maximize gain rational coalition builders minimize the size of the winning coalition. Riker shows that Calhoun's insight is correct – there is a tendency in such a system for a) two parties to be created and b) the system to be unstable and chaotic. In a passage reminiscent of Calhoun, RIKER [1962, 160] writes that this instability "may react on the larger society destroying the bonds of common interest, loyalty, and love that hold any society together."

Instability can be overcome and a balance of power created in both Calhoun's and Riker's theory if both parties are evenly balanced, each is uncertain of victory in a high stakes struggle, and each feels in RIKER's [1962, 180–181] words "intense fear" and "universal terror" at the prospect of anarchy or disequilibrium. Calhoun, however, believed that the conditions for equilibrium were not met in his time.<sup>13</sup>

Calhoun's critique of democracy was influenced by the events of his day. Patronage, heretofore confined mostly to state and local governments was coming to play a larger role in federal politics. The four year tenure law of 1820 gave each incoming President the opportunity to disburse thousands of plum federal positions. Calhoun recognized how President Adams and later President Jackson used this power to support their own re-elections (WILTSE [1968, 66]).

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<sup>12</sup> In the absence of a constitution supporting the principle of concurrent majority, Calhoun too saw politics as a zero or negative sum game.

<sup>13</sup> For Calhoun's theory of the creation of constitutions out of a balance of power see the section below on constructivism and evolution.

The Jackson presidency, in particular, marked a turning point (see BOWERS [1922, Ch. III] and REMINI [1963]). Jackson brought “democracy” to America and took politics away from the intellectuals and elites. At Jackson’s inauguration the masses streamed in unprecedented numbers into Washington to demand favors. While some took the White House china, others petitioned for sinecures in the federal bureaucracy. The Jackson era also saw a massive increase in Presidential power as illustrated by the Mayville Road veto, which established Presidential control over internal funds, and Jackson’s war against the Second Bank of the United States (WILTSE [1968, 67–70], CAPERS [1960, 173]). Calhoun observed these events in conjunction with increases in government spending, employees, revenues raised through the tariff (WILTSE [1968, 70]), a press funded and operated by the newly formed political parties (REMINI [1963, 76–86], SUMNER [1899, 326]), and Jackson’s “sabre rattling” and talk of war with France.<sup>14</sup>

This growth in federal power would have been enough to disquiet Calhoun, but in addition Calhoun saw that the North and South were becoming increasingly separated over the issue of slavery.<sup>15</sup> RIKER [1962, 189] argues that there are two conditions necessary for the creation of disequilibrium in a balance of power situation: 1. A shift of power among the players and 2. “A willingness on the part of the winner to set high stakes.” These two conditions correspond exactly to what Calhoun saw. A shift in political power to the large and rapidly growing North and an increasing feeling in the North that compromise over slavery was impossible. The Civil War would not have surprised Calhoun.

### 5. *The Concurrent Majority*

Calhoun’s preferred constitution was based upon the notion of unanimity, or as he calls it, the “concurrent majority.” “Power can only be resisted by power (12),” said Calhoun, and a valid constitution must be based upon this fact. How then can government be limited? – it must be a government of the concurrent majority. The concurrent majority (also called the constitutional majority) was an unanimity condition. Each interest in society was to be given veto power over the others.

It is this mutual negative among its various conflicting interests, which invests each with the powers of protecting itself; and places the rights and safety of each, where only they can be securely placed, under its own guardianship. Without this there can be no

<sup>14</sup> Ironically, Calhoun was involved with starting the political funding of the press (REMINI [1963, 79]).

<sup>15</sup> Calhoun was, in other words, observing a shift from a unimodal distribution of preferences to a bimodal distribution. Under an evenly divided bimodal distribution a small change in votes can cause a large change in policy. Hence, the incentive to bribe (or in extreme cases, kill) median voters is large. Chaos results if some restraining force, such as fear of anarchy, is not found. These issues are discussed at length in LEVY [1989].

systematic, peaceful, or effective resistance to the natural tendency of each to come into conflict with the others. . . . It is this negative power . . . be it called what term it may, – veto, interposition, nullification, check, or balance of power, – which, in fact forms the constitution . . . It is indeed, the negative power which makes the constitution, – and the positive power which makes the government (85).

Calhoun's idea of the concurrent majority is similar to the unanimity condition developed by BUCHANAN and TULLOCK [1962] in the *Calculus of Consent* and it has the same purpose and effect. The unanimity condition forces different interests "to unite in such measures only as would promote the prosperity of all (38)."

Calhoun is in many ways a stronger proponent of the unanimity condition than Buchanan and Tullock. Unlike Buchanan and Tullock, Calhoun does not attach much importance to the problem of holdouts. He raises the issue of whether "it would be impracticable to obtain the concurrence of conflicting interests" or whether, if such concurrence occurred, it would be "too tardy to meet, with sufficient promptness, the many and dangerous emergencies, to which all communities are exposed (64)."

Calhoun argues that inability to reach decision is not a real problem under government of the concurrent majority. The necessity of coming to an unanimous agreement will cause people to put aside opportunistic motives. He gives as an example the jury system and states that "Nothing, indeed, can be more favorable to the success of truth and justice, than this predisposing influence caused by the necessity of being unanimous (66)." If juries operated on the majority principle they would be controlled not by the search for truth and justice but by "the factious feelings of the day (67)." Governments based on the unanimity principle would be even more likely to compromise because the potential consequences of deadlock are of much greater importance. Both fear of anarchy and the necessity for conciliation and cooperation will lead to agreement (69).

Calhoun also presents Poland, the Confederacy of the Six [Iroquois] Nations, Rome, and Great Britain as paradigms of the concurrent majority principle (71–107). For Calhoun, Poland provides perhaps the clearest example of a unanimity rule. According to Calhoun, for more than two centuries, the election of a King or the passage of legislation required unanimous approval from the appropriate legislative bodies. Calhoun notes that "...this government lasted, in this form, more than two centuries; embracing the period of Poland's greatest power and renown" (71).<sup>16</sup>

Calhoun's analysis of the holdout problem suggests further distinctions between the concurrent majority and Buchanan and Tullock's unanimity princi-

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<sup>16</sup> Modern historians tend to be more sympathetic to John Adam's negative assessment of the Polish system than to Calhoun's more positive interpretation. See ADAMS [1971, Vol. I, 72–90] and compare with PALMER [1959, Ch. XIII, esp. 412–418].

ple. Calhoun does not see literal unanimity as a desirable constitutional principle. A government that cannot act without the consent of every member of society is little different than an anarchy. The transaction cost advantage of government over markets arises because strict unanimity is not required in government. Therefore, effective versions of the concurrent majority must implement more measures than strict unanimity would approve. But we are then back to the situation where a majority imposes its will upon a minority.

BUCHANAN and TULLOCK [1962] address this dilemma with a theory of the optimal degree of consent. Paretian optimality, and therefore strict unanimity, is accepted as a normative criteria. But Buchanan and Tullock recognize that strict unanimity can be prohibitively costly in the real world of transaction costs and strategic behavior. Therefore, rational individuals facing an uncertain future would unanimously be willing to forego the security of strict unanimity in return for the increased production of public goods which a less strict voting rule allows. The optimal rule would differ depending on the category of decision to be made (e.g. defense, wealth redistribution, foreign policy) and the level of government at which it was made (e.g. local, state, national).

#### 6. *Calhoun on Interest Groups and Political Leaders*

Calhoun's thought on the question of optimal consent is closely related to pluralist and corporatist "group theory." In particular, Calhoun's concurrent majority applies to interest groups and not individuals. In Calhoun's view, the individual alone is not powerful enough to oppose the government; countervailing power must come from large and powerful interest groups. These interest groups, however, represent the interests of individuals (60).

Ideally Calhoun argues that every interest group in society should have a veto on every other (26). However, a voting rule whereby "a few great and prominent interests (26)" are given veto power is nearly as good. Such a rule "would require so large a portion of the community, compared with the whole, to concur... that the number to be plundered would be too few, and the number to be aggrandized too many, to afford adequate motives to oppression and abuse... (27)."

Calhoun's theory of optimal consent is based therefore on two ideas; 1. interest groups exist which represent the interests of individuals, 2. enough interest groups can be included in the constitution so that the gains from exploiting any remaining groups are minimal. His theory is weak when these conditions do not hold. As he recognizes (see further below) condition two may be difficult to operationalize, especially in a democracy. In an aristocracy or monarchy there may be only three important interest groups; the king, the nobles and the people. Each of these groups can be given an effective veto, as for example in the British system. In a liberal democracy, however, there are many interest groups. Society is separated according to the complex division of

labor and not according to much simpler class divisions. Gains from exploitation may remain when many interest groups exist because it is difficult to include all these groups in a constitution.

Mancur OLSON's work [1965, esp. Ch. V] criticizes assumption one, that interest groups represent the interests of individuals. Interest groups are public goods – every person with the same interest may benefit from the actions of the group even though he does not contribute toward the group's costs. Like all public goods we can expect that interest groups will be underprovided. Moreover interest groups will be underprovided in an uneven manner. Small groups and groups that provide selective benefits with membership will be able to form easier than large groups which cannot tie private goods to membership. It is therefore unlikely that a group will exist to represent every interest, or that groups will represent interests accurately.

Calhoun does not address or resolve these points in a convincing manner. He recognizes that constitutions can create forums for interest groups which are too large to form spontaneously (61), but he leaves this point undeveloped. Both the types of interest groups that form and the incentives for action they have in the post-constitutional milieu are endogenous at the constitutional level.

The Olson critique may be overcome if constitutions can be designed with his critique in mind. Constitutions which give rise to “encompassing” interest groups, rather than narrow interest groups, will minimize deadweight loss. Encompassing groups are larger relative to society as a whole and therefore have less incentive to exploit other groups (OLSON [1982]). Union laws which give rise to industry- or nationwide unions, for instance, may be superior to union laws which give rise to craft- or enterprise-based unions. Calhoun, however, had almost nothing to say about these types of issues.

### *6.1 Why the Best Get on Top*

Interest groups may refer not only to the forces in society which push for different laws, but also to politicians themselves. On this topic, Calhoun did have much to offer in the way of a theory of endogenous interest groups. Different constitutional regimes generate politicians with different talents and temperaments. Calhoun thought this point provided strong ammunition for the case for government by concurrent majority. Calhoun offers a dynamic analysis of political character in support of his belief in the efficacy of unanimity rules.

Under a regime of the concurrent majority, political talents tend in the direction of compromise rather than rent-seeking. Since for any one interest to gain all others must gain, politicians with a comparative advantage in compromise and conciliation will rise to the top. Those with “wisdom, patriotism, weight of character”, “integrity” and “fidelity” will be able to “command the confidence of others” and in so doing best represent their own interests (50, 69). In Calhoun's system the character of the rulers is endogenous and changes with



the character of the political system. The proper political system can “purify” a “corrupt and degenerate community (51).” While “that which corrupts and debases the community, politically, must also corrupt and debase it morally (49).” Moral corruption leads, of course, to further political corruption and a downward spiral ensues.<sup>17</sup>

Compare this analysis to Friedrich A. Hayek’s discussion of “why the worst get to the top.” HAYEK [1944, 135] in *The Road to Serfdom* argued, for example, that “the unscrupulous and uninhibited are likely to be more successful in a society tending toward totalitarianism.” When government is not subject to constitutional checks, those who rise to the top will be those who are most adept at wielding power. Such a composition of government leaders will increase government power, and create further feedback effects upon the type of persons who succeed in government. Society proceeds towards serfdom.

Calhoun’s analysis also is relevant to modern debates concerning term limits and the American Congress. Proponents of term limits claim that such limits would lower the private gains from holding Congressional office. Those adept at rent-seeking would be less likely to run for office and congressional members from the common citizenry would be more likely. The legislative branch of government would reorient itself towards solving national problems rather than garnering personal benefits for individual congressmen. Politics would be de-professionalized and returned to the hands of the citizenry.<sup>18</sup>

Calhoun did not consider the issue of term limits and, because he saw the role of representation in “Burkean” terms, he would not have regarded the professionalization of politics as a necessary problem. However, his analysis does address the issue of political character in another manner. Calhoun focused upon which talents were developed into professional skills. Calhoun’s purpose was to cultivate desirable kinds of political skills in professional hands, rather than to prevent professionalization of politics per se.

The modern public choice school has not generally recognized the importance of different types of political characters for the operation of government. Following the development of neo-classical and Chicago School economics, public choice tends to regard all individuals as having similar utility functions.<sup>19</sup> Behavioral differences are then deduced solely from changes in constraints or incentives. A selection effect, however, operates in addition to the incentive effect. Different kinds of individuals will be attracted to different kinds of government. The kinds of politicians who flourish under tyranny will differ from the kinds of politicians who flourish under constitutionalism. Al-

<sup>17</sup> Similarly a proper constitution leads to good politicians who strengthen the constitution, etc.

<sup>18</sup> On the benefits and costs of term limits, see TABARROK [1992 a].

<sup>19</sup> COWEN [1989] offers a critique of the approach of Stigler and Becker, which postulates that all individuals have an identical preference structure.



though older, classical approaches to political science usually emphasize differences in political character, this idea is consistent with a rational choice perspective.

### 7. *Buchanan, Hayek and Calhoun: Constructivism vs. Evolution*

Embodied in Calhoun's work is not only a normative theory of government, but also a positive theory of how political change comes about. The degree to which political institutions should be subject to conscious design has been subject to much recent debate. Hayek and Buchanan, for instance, disagree about the role of reason in the design of human society (BUCHANAN [1988]). The idea that we can start anew and redesign our institutions is, in Hayek's view, false and subversive of Western civilization (HAYEK [1973, Ch. 1]).

The state, according to Hayek, is a product not of reason and contract but of blind evolution. As is true of evolution in the biological sphere, evolution in the social sphere is capable of "designing" institutions far more complex than we can ever understand or design ourselves. The attempt to rationally design new institutions is more likely to lead to socialism than to improve the extended order, capitalism.<sup>20</sup>

The final paragraph of Buchanan and Tullock's seminal work *The Calculus of Consent* indicates their rejection of this view.

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... (BUCHANAN and TULLOCK [1962, 306]).

Calhoun accepts neither of these stark positions. He is skeptical of our ability to design constitutions and writes that:

...it has exceeded human sagacity deliberately to plan and construct constitutional governments, with a full knowledge of the principles on which they were formed...it would seem almost impossible for any man, or body of men, to be so profoundly and thoroughly acquainted with the people of any community which has made any considerable progress in civilization and wealth, with all the diversified interests ever accompanying them, as to be able to organize constitutional government suited to their condition (78).

But neither does he ascribe to a blind evolutionary view of progress. Instead, Calhoun derives his views about the origin of constitutional governments from an analysis of history. Constitutional governments are almost invariably pre-

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<sup>20</sup> This false belief which Hayek calls the constructivist idea is rooted in Cartesian rationalism and it has its political expression in the Hobbesian idea of a social contract (HAYEK [1973, 9–10]).

ceded by the “simpler and absolute forms” of government (absolute forms of government are those which are not limited – thus monarchy, aristocracy and democracy are all absolute forms of government (36–37)). As time passes these absolute forms of government lead to “oppression,” “abuse of power and, finally, to an appeal to force (79).” In most cases “military despotism” results.

However, alternative possibilities exist for Calhoun. At some points in time the constellation of powers is so balanced that no interest is confident of its ability to triumph in battle, and each side fears the possibility of anarchy and chaos more than it fears its opponent (38–39). In this moment compromise is possible; this compromise, which gives to each interest a distinct voice in government, is the beginning of constitutionalism. The foundation of constitutional government once laid in this manner can afterwards be “matured and perfected (79).” This is the typical way in which absolute monarchies are transformed into constitutional monarchies.

Aristocracies can develop into constitutional governments through a process similar to that of monarchies. In their vying for power the noblemen and monarch compete to bring the people on to their side.<sup>21</sup> Over time an equilibrium can be established where each of the estates has a veto on the other. Equilibrium is more likely if the monarch and nobles are governed by the principle of hereditary descent. For if such is the case “the community or kingdom, comes to be regarded by the sovereign as the hereditary possession of his family, – a circumstance which tends strongly to identify his interests with those of his subjects, and thereby, to mitigate the rigor of the government (84).” Hereditary nobles surrounding the sovereign play the useful role of resisting the Monarch, thereby supporting the security of the people (84–85). The small number of interests in an aristocracy or monarchy and the presence of hereditary descent implies that government officials possess “property rights” to their positions. Bargaining costs are low and therefore exchange and compromise are possible.

These stabilizing factors do not exist under absolute democracies; Calhoun therefore sees little hope for their transformation into constitutional democracies. The great number of interests in an absolute democracy creates difficulties which can only be overcome by a complex bargain or constitution (81).<sup>22</sup>

<sup>21</sup> The “people” – a large group with free-rider problems – do not self-organize but are organized by the “privileged” groups of the noblemen and the monarch. Once organized the “people” are in a strong bargaining position because both the noblemen and the monarch vie for their support. Calhoun, however, did not make this point.

<sup>22</sup> Calhoun holds that the only example of such a transformation from absolute to constitutional democracy is the United States (although it can be argued that the United States were not an absolute democracy). But this transformation was a result of very special factors. For instance, the colonies were established by and had the heritage of Britain, which itself possessed a constitutional government created in the normal manner (i.e., as above). See CALHOUN’S *Discourse* ([1968, 181–199]).

Absolute democracies are also at a disadvantage because they cannot rely upon hereditary descent. Without the stability afforded by this property right the battle for power will be excessively violent (83). These two factors mean that bargaining is costly and compromise unlikely, hence “aristocracies and monarchies more readily assume the constitutional form than absolute popular governments (83).” Through these distinctions, Calhoun does implicitly recognize that unanimity rules involve prohibitive transaction costs when the number of bargainers is large.

Calhoun’s own summary of the nature of political change is succinct. Constitutional governments “have been, emphatically, the product of circumstances (79).” “They have, for the most part, grown out of the struggles between conflicting interests, which, from some fortunate turn, have ended in compromise, by which both parties have been admitted, in some way or another, to have a separate and distinct voice in government (78).” This sort of bargain is more likely in the case of aristocracies and monarchies where there are few interests and the possibility of hereditary descent exists.

#### 8. *Concluding Remarks*

Although Calhoun developed an impressive and original theory of government, his political theory cannot be judged entirely successful. As discussed above, Calhoun did not resolve at least three problems: how interest groups form, the link between interest groups and individual interests, and how liberal democracies can offer veto powers to prevent exploitation through politics. As a result, his argument for government by concurrent majority tends to collapse into an argument for corporatism with extensive veto privileges.

Furthermore, Calhoun furnishes only weak ethical foundations for his advocacy of the concurrent majority. Unlike Buchanan, Calhoun does not subscribe to normative individualism or contractarianism. Instead, Calhoun’s thought reflects Aristotelian and Calvinist influences. The social state is thought of as God-given and methodologically prior to civilized man. Calhoun writes that “there never was such a state of nature, and never can be... [Man’s] natural state is, the social and political – the one for which his creator made him, and the only one in which he can preserve and perfect his race (58).”<sup>23</sup> He speaks of the “preservation of the race (5, 8, 58)” as the ultimate good and he refers to “the end for which society is ordained [by God] (7).” His statements about the good of the community and the human race provide little of substance.

This lack of ethical foundations shows up in Calhoun’s defense of slavery, which continues to hurt his reputation and draw attention from his more valid

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<sup>23</sup> SPAIN [1968, 84–92] documents Calhoun’s scattered comments attacking the social compact theory of the state.

and interesting contributions. A modern revision of Calhounian political theory should consider a more consistent ethical base.

Buchanan has chosen individual preferences as the source of justification for his proposed unanimity rule. For Buchanan, informed consent is the ultimate source of value. The purpose of a political constitution is to allow men to achieve their desired ends. There are no values higher than those given by preferences, and the state is visualized as a hypothetical social compact among autonomous, contracting individuals.

Once we make preferences the ultimate source of value, however, deviations from strict, literal unanimity become difficult to justify in the absence of interpersonal utility comparisons. To the extent that such comparisons are unscientific, the case for less than strict unanimity is weakened. Strict unanimity, however, is equivalent to a complete absence of government (anarchy) which neither Calhoun nor Buchanan endorse.

Other possible foundations for the concurrent majority include natural rights theories or more thoroughly worked out versions of utilitarianism or communitarianism than Calhoun provided. With these theories, we must take recourse to a notion of good which is not strictly reducible to individual preferences.

In any case, the foundations chosen for unanimity will affect the substance of the resulting political constitution. The ethical foundations used for political philosophy will affect the resolution of several important issues, including the level at which unanimity should be applied, whether we should start with the status quo as an initial benchmark, the strictness of unanimity required for governmental action, and when unanimity should be overridden, if ever.

### *Zusammenfassung*

In diesem Beitrag wird John C. Calhoun als ein Vorreiter der modernen Public Choice Theorie behandelt. Calhoun antizipierte und entwickelte die Doktrin des 'public choice contractarianism,' wie sie von Buchanan and Tullock entwickelt wurde. Wir betrachten Calhouns Theorie, warum eine Demokratie nicht in der Lage ist, Freiheit zu bewahren sowie Calhouns konstitutionellen Reformvorschlag, die Einführung einer Einstimmigkeitsregel. Es werden die Parallelen zwischen Calhoun und Hayek aufgezeigt. Dabei gehen wir insbesondere auf die Theorie des sozialen Wandels und Hayeks Analyse der Frage ein, weshalb 'the worst get to the top.' Der Aufsatz endet mit einigen Bemerkungen über problematische Aspekte in Calhouns Theorie.

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