CONSTITUTIONAL DESIGN AND ECONOMIC FREEDOM

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Abstract:
Buchanan and Tullock's original trade-off model of constitutional design is used to analyze how constitutional design affects post-constitutional rent seeking, and, in turn, how the anticipation of post-constitution rent seeking should lead to modification of constitutional design -- specifically with respect to imposing and maintaining effective super-majority approval rules. The effects of *de jure* constitution enumerations and the number of *de facto* veto players in a polity on economic freedom are empirically explored with the result that only a few constitutional characteristics, such as a bicameral legislature, religious freedom and the *de facto* veto players, seem to matter.
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CONSTITUTIONAL DESIGN AND ECONOMIC FREEDOM

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The great desideratum in Government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the society to control one part from invading the rights of another, and at the same time sufficiently controlled itself, from setting up an interest adverse to that of the entire society. James Madison, 1787.

Legal theory holds that constitutions shape society. The political reality is that societies shape constitutions. Morton and Knopff, 2000.

Introduction

These quotes, and this paper, raise a question that we have raised, and attempted to answer, before; namely: "Do constitutions matter?" Previously, we have addressed that question by studying whether any constitutional variables can account for differences in countries' income levels or growth rates, and specifically, whether they matter with respect to the "convergence hypothesis" (de Vanssay and Spindler, 1994, 1996). Our answer was a very qualified "yes".

Here we will study whether we can say the same with respect to economic freedom. This is a timely issue as the current year marks a decade of journal-published research employing the modern measures of economic freedom pioneered and developed under the auspices of The Fraser Institute.[2] Following the lead of Vorhies and Glahe (1988), who deployed The Freedom House measures of political freedom, economic freedom, and civil liberties,[3] Spindler (1991) used the early results of Fraser Institute symposia to show the importance of such measures in understanding the institutional, and particularly, the free market basis for countries' economic success.

A decade of widening publication and acceptance followed during which even major journals accepted articles employing economic freedom measures.
While these studies were often more sophisticated and more encompassing, they most often confirmed the elementary results found previously – namely, that economic freedom matters.[4]

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[2] See, for example, Walker (1988), Spindler and Still (1991), Spindler and Miyake (1992), and Easton and Walker (1997).

[3] See Friedman (1988) for a similar analysis.

[4] For example, see the survey by Hanke and Walter (1997). Easton and Walker (1997) published in the "Proceedings" issue of one of the top economics journals, *The American Economic Review*. Grubel (1998) showed that economic freedom had favorable distribution, as well as overall, effects. The most recent test of alternative economic freedom specifications is given by de Haan and Sturm (2000). Gwartney, Holcombe, and Lawson (1998), and Olson, Sarna and Swamy (2000), take a somewhat different approach to measuring the impact of government. Knack and Keefer (1995, 1997) and Keefer and Knack (1997) explore other institutional variables with some success; apparently, trust, civic norms, the rule of law, low corruption, low expropriation, and contract enforceability are also important with respect to the economic performance of countries.

The current paper considers first the issue of constitutional constraint using a device introduced by Buchanan and Tullock (1965), and replicated elsewhere in public choice literature, to discuss the choice of an optimum decision rule. This methodology is described in the next section. The following section then presents an alternative view of the effect of rent seeking to that given by Spindler (1990), essentially arguing that the decision rule necessary to contain rent seeking must be more inclusive than that required for a social optimum in the absence of rent seeking. This has certain implications for constitutional constraint that are analytically explored in the next section, and implications for economic freedom that are then empirically explored in the penultimate section. The final section gives our concluding remarks.

Constitutional Decision Rules

In their now classic text, Buchanan and Tullock (1965) provided a very useful way to conceptualize the balancing of costs that is inevitably involved in constitutional choice. Their ideas are best illustrated by their graph of relative interdependency costs, a version of which is given here as **Figure 1**. A brief explanation of their ideas, and **Figure 1**, follow as a prelude to understanding the rent seeking potential of any constitutional choice.

A constitution can be conceived as a set of rules about the relationship between a government and those governed. It is natural for economists to think that such rules should be chosen in a way that takes into consideration the costs of government action relative to the costs of private action, when there are alternative ways of meeting objectives which are public in the sense of entailing interdependencies (i.e., like production and/or consumption externalities, the pure case of which is known as a public good). Ideally, government action should be allowed, or legitimized, by constitutional rules only when it has lower interdependency costs than private alternatives.[5]

One of Buchanan and Tullock's key insights was that interdependency costs in a democracy are a function of the decision or approval rule that authorizes and legitimates government action. They distinguished two different components of total interdependency costs (**E** and **D** added vertically and shown as **T** in **Figure 1**).

Externality costs (shown as **E** in **Figure 1**)) are the net costs (costs minus benefits) of a government decision experienced by those who are not part of the approval or decision set specified by the constitution for a given category of government activity (e.g., policing, defense, administration, legislation, etc.). As the proportion of the population specified by the constitutionally-mandated decision rule increases, that is, becomes more inclusive, the expected externality costs would tend to decrease, reaching zero at the point of complete inclusiveness or unanimity. At unanimity, only pure Pareto improvements would gain approval, whereas at less than unanimity, potential Pareto-improvements (those entailing net benefits but without complete compensation), or non-Pareto actions, might be approved,

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[5] Interdependency costs are the equivalent of selected private and/or social transactions costs associated with joint-ness in production and/or consumption. Hence, **T** might also be understood to represent the transaction costs of using government as an agent to arrange the provision of a specific good or category of goods. For pure private goods, **T** will always exceed the private costs of provision since interpersonal costs crowd out and augment individual costs.

thereby levying net costs on those citizens (i.e., third parties) excluded by the decision rule.

Decision costs (shown as **D** in **Figure 1**) are the net costs of a government decision experienced by those who are part of the approval or decision set specified by the constitutional for a given category of government activity. Drawing **D** as an upward sloping curve, that is, as a monotonically increasing function of the percent approval required by the decision rule, has intuitive appeal. Following Buchanan and Tullock, one's first thought might be that as the size of a group that must reach agreement increases, the costs of reaching a decision also increase, if only because more people would experience such costs. Indeed, it is typical to think that unanimity might be infinitely costly to achieve.

However, the shape of curve **D**, and its upper limit, probably depends in large part on the nature of decision-making institutions.[6] After all, markets make unanimous decisions every day at minimal transactions cost to the entire population of participants and (self-excluded) non-participants. However, that is a quite different excursion into constitutional design which will not be pursued here, where, for the moment, it is useful to regard curve **D** as upward sloping.

Vertically adding together **E**, a monotonically decreasing curve, and **D**, a monotonically increasing curve, quite naturally yields a **U**-shaped curve, **T**, with a distinct minimum point, which, for Buchanan and Tullock, defines the optimal decision rule **K***.[7] Curve **T** could also be used to determine the category of issues or actions, which the constitution authorizes. If the private sector entails lower interdependence costs for a given activity than the minimum capable of being achieved with the optimal decision rule for government, **K***, such as those given by the vertical distances **0a**, **0b**, and/or **0c**, along the ordinate of **Figure 1**, the government should not be authorized by the constitution to undertake any activity in that regard.

The constitution should only authorize government involvement in activities for which its interdependence costs are lower than for the private sector, as in the case where private sector costs are **0e**, or especially, **0f**. Indeed, here, with any voting rule between the limits set by curve **T**, the government would do better than the private sector. Some would regard this to be the case for the provision of the few goods that are almost universally judged to be public goods that only government should supply, such as defense, certain infrastructure, and the "dignity of the sovereign" (as, say, enumerated by Adam Smith). Finally, if private interdependence costs are **0d**, it is a matter of indifference which sector is authorized to perform by the constitution.

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[6] Decision costs may even be related to external costs in that, for those decision makers with a conscience, imposing external costs on others may be objectionable to the point of precluding, or deterring, agreement. Thus, it may be easier, hence cheaper, to agree at unanimity where external costs are zero. For pure public goods, which by their nature are Pareto-improving and non-redistributive (financing aside), unanimous assent should be instantaneously forthcoming at zero cost, if information costs are also zero. That is, if there is enough information to draw the curves in a graph like **Figure 1** for pure public goods, **D** may well be horizontal or even map onto the abscissa; the shape of **E** would depend on how the public good was financed. In the absence of strategic behavior, charging the hypothetical Lindahl taxes might yield a **E** that was also horizontal at zero.

[7] This minimum point would only occur at the same **K*** as where **D** and **E** cross if these two curves have the same shape (but plotted from opposite axes). If **D** rises faster (slower) than **E**, then **K*** lies to the left (right) of the intersection of **E** and **D**. Spindler (1990) argued that the explicit introduction of rent seeking costs might create multiple (local and global) optimum rules.

Presumably, a Buchanan and Tullock style constitution would enumerate only those government functions that met this strict cost-comparison test, and then would circumscribe government action to only those instances where K^* approval was achieved on specific issues. A constitution convention comprised of like minded citizen-economists, behind the veil of ignorance or uncertainty usually assumed (but not so dense a veil as to preclude knowledge of T and comparable private costs for every conceivable future activity), might well choose such a constitution at a minimal, even zero, cost. Indeed, with certain information on costs, and the Buchanan and Tullock decision rule for choosing decision rules and categories of authorized government decisions, a modern computer program could design a constitution for any society in a nano second.

Whether a population of rationally ignorant, and self-interested, citizens and politicians would then accept such a constitution is quite another issue. Indeed, it is one we had best quickly pass over to look at somewhat different implications of Buchanan and Tullock's paradigm. For the moment, it is sufficient to imagine that an existing constitutional decision-making rule has been chosen with their methodology, or at least, that an existing decision rule can be judged by it.

Post Constitutional Rent Seeking Costs

Suppose that for a particular category of joint goods, the interdependence costs of private provision are actually $0e$, as illustrated in **Figure 1.** There is then a wide range of decision rules that would entail lower interdependency cost for government provision compared to private provision. K^* is the best decision rule in the sense than it not only minimizes interdependency costs but also provides the maximum advantage for government action relative to the private alternative. The difference between those minimum costs, $0d$, and private costs $0e$, that is, de, then represents a social surplus from government provision and the constitutional rule that authorizes it with K^* approval. That is, de is a *rent*, or alternatively, a *return* on constitution making with respect to this enumerated category.

In reality, where there is a rent, there will be rent seeking (See Tullock 1967, 1975, 1989, 1997). If the rent occurs on an open commons, like an open, democratic government, rent seeking competition will tend to dissipate the rent to create a "tragedy of [the government] commons". If the extent of franchise or direct access is severely limited, like with modern forms of representative democracy, or even certain direct democracies (Feld and Kirchgässner, 2000), rent dissipation may also be limited. If competition takes place via the exchange of assets, as with public tenders, public auctions, or direct vote-buying, rent dissipation does not necessarily represent a true social cost -- rather, it represents only individual costs and gains, which are offsetting (except for brokerage fees and other transactions cost related to the exchange of assets).

However, if real resources are used up in lobbying, in vote trading (as Tullock [1997] recently explained), or in constitution making, some, if not all, of de might represent a social cost. At the limit, there would be no net rent from government provision, or no net return to constitution making, in this category or, indeed, in any category. Rent seeking costs might equal de -- or even more, as some unexploited possibilities still remain at this point.

A useful way of thinking about curve E in **Figure 1**, although not one suggested by

Buchanan and Tullock, is as a type of demand curve for inclusiveness, or, alternatively, as a supply curve for non-inclusiveness, on a given issue specified as a legitimate function of government. The vertical distance that **E** lies above the abscissa actually measures maximum total value, not marginal value (as in the case of the ordinary demand curve) or average value (as in the case of the all-or-none demand curve), although curve **E** is closer (monotonically-related) to the latter concept. It is also useful to consider that **E** measures the maximum amount those excluded from the decision process might spend to defend their interests through some political process (voice, exit) other than voting. It thus measures potential, maximum rent-defending costs for those potentially harmed by this specific government decision-process.[8]

Similarly, a useful way of thinking about curve **D** is as a type of supply curve for inclusiveness, or, alternatively, as a demand curve for non-inclusiveness, on a given issue specified as a legitimate function of government. Again, the vertical distance that **D** lies above the abscissa actually measures the minimum total cost of undertaking a decision with a given decision rule. Thus, **D** measures the minimum amount those included in the decision process must receive to justify undertaking a decision. That is, **D** gives the minimum supply price of decisions.

D also measures minimum rent seeking costs with respect to obtaining a decision *per se*. Those who want to obtain a decision in this category will have to pay at least the ordinate value of **D** at **K***. However, if there is rent seeking competition, much more in rent seeking costs might be paid in total by all competing rent-seekers.

Since Buchanan and Tullock took an abstract, social-optimization perspective on government decision-making, total interdependency costs **T**, and minimization of **T**, was their main focus. Constitution-makers, just like Adam Smith's Impartial Spectator, were expected to take this same social, rather than their own individual, perspective.

However, self-interested rent-seekers would tend to regard only **D**, as their minimum rent seeking cost, and the comparable private cost (say **0e**) as their potential return from lobbying government rather than purchasing their objective privately. They would disregard **E** because the agreement of those suffering **E** is not required given the government, less-than-unanimity decision rule. Further, those suffering **E** might not be sufficiently identifiable to organize themselves into an effective interest group to counter, or defend against, other rent-seekers.

If they could organize, those harmed by the external costs of proposed decisions might be thought of as driving some Coasean bargain with **K** decision-makers, and/or lobbying **K** decision-makers in competition with rent-seekers. However, for any private interdependency costs higher than **0b** in **Figure 1**, rent-seekers can outbid the rent-defenders (those who suffer **E** and would pay up to **0b** to avoid it) in paying **K*** decision-makers' decision-costs, **0b** and more -- as much more as the private interdependency cost saved by government provision.

It can now be easily seen how post constitutional rent seeking costs can potentially

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[8] This is not an interpretation given in Buchanan and Tullock (1965), although they would probably not disagree with its reinterpretation in terms of a concept that the latter author created and popularized much later (See Tullock, 1967, 1975, 1989, 1997).

exceed the rents from constitutional constraint, and how they can also pervert a set of constitutional constraints that was designed to promote the general interest. Once the constitution specifies rule K^*, rent-seekers will find it in their individual and group self-interest to lobby for decisions for government provision, even when the private sector interdependency costs are as low as $0b$, much less than the $0d$ that would be the limit for a decision in the general interest.

In this way, goods which might be generally regarded as private goods, not only in the sense that they are exclusive and exhaustive in consumption (unlike pure public goods), but also in the sense that they can be privately supplied at lower interdependency costs, come to be supplied in whole or in part by government. For example, think about how a mandate for government provision of public health might be expanded over time by those who want others, via the government, to finance their enjoyment of private health care at the expense of the general taxpayer. A constitution could prevent this perverse expansion of government by setting the decision rule at K', or even retain some rents with a decision rule at K'', rather than at K^*, in **Figure 1**.

With K', rent seeking would be worthwhile only when private interdependency costs exceeded $0d$, the minimum T. There would still be rent seeking costs incurred over the rents created by government provision when it is less costly than private provision. However, the additional rent seeking costs -- really deadweight costs in the traditional sense -- would not also be incurred. Of course, if K was raised high enough, say to K'', it would even cut down on the dissipation of the pure rents, as well. Thus, a constitution for a rent seeking society would have to set the decision rule at a higher level of relative unanimity than what Buchanan and Tullock (1965) would have deemed optimal in the absence of the rent seeking behavior that inevitably occurs once the constitution, and thereby government form, have been chosen.

Constitutional Constraint[9]

Thus, in a rent seeking society, government can be rescued from a tragedy of the commons by having a constitution that imposes veto possibilites, super-majority or relative unanimity decision rules. However, in practice it is seldom the case that such rules are specified for any given decision-making body, except for exceptional circumstances.[10] Typically, the incentive for such decision-makers to minimize their own decision costs leads to the common practice of using simple majority rules for final approval while using simple plurality, decision subsets (i.e., committees), or specifically empowered individuals (i.e., special prosecutors and other mandated, special purpose "dictators") to make the sometimes crucial (e.g., agenda setting) decisions leading up to that simple majority vote.

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[9] Some examples of other analytical and empirical studies of constitutional constraint are: Abrams and Dougan (1986), Anderson and Hill (1988), Aranson (1988), Knack and Keefer (1995), McDonald (1988), Montenegro (1995), Scully, G.W. (1992), and Volckart (2000). Warneryd (1990) suggests a private alternative to government and formal constitutions.

[10] For example, in the US, a super majority is required in both houses of the legislature for constitutional amendments and for overriding a presidential veto. A super majority requirement for amending the constitution is quite common in developed countries. They have set a higher standard for changing the "rules of the game".

Given that a simple majority can physically defeat a sizable minority, it would be difficult to run any human organization by a super-majority decision rule for very long.[11] However, the same effect can be achieved by requiring approval by simultaneous and/or sequential decision-making entities, which are capable of defending their power against potential usurpers among the other entities whose approval is also required.

This was the genius and inspiration of James Madison in designing the US Constitution and government structure in such a way as to balance "faction against faction". His view was that the competition of contending interest groups (or "factions" as was then the fashionable jargon) in various political forums – each requiring less than relative unanimity but also each having different factions and/or factions with different relative advantage -- would tend to balance off the self-interest of factions, except when it served the general interest by producing an effective consensus or relative unanimity.

Effectively, *de jure* competing political forums provide a *de facto composite* super-majority decision rule, as long as competition, rather than cooperation and/or collusion, prevails. Thus, government under the US Constitution was designed to be very expensive to rent-seekers, except when it served the general or public interest -- as would be the case (say) when for certain true public goods, externality costs would be very low if not non-existent.[12]

The US Constitution constrained the size of government quite effectively for over a century. Eventually, certain rent seeking innovations[13] changed the relative power of the competing political forums and/or made cooperation more attractive than competition, thereby, effectively decreasing the constitutionally-designed, *de facto* super-majority nature of *de jure* government institutions. Nevertheless, US government is still relatively small compared to many other modern democracies where fewer checks and balances result in *de facto* composite decision-rules, which are even less inclusive. Consequently, the US private sector is relatively larger and typically enjoys more economic freedom.[14]

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[11] Given that politics is the direct, but potentially cheaper, analog of war, the simple majority rule undoubted evolved from (anticipated) battlefield situations where superior numbers carried the day when technology and position were similar. Indeed, Umbeck (1981) asserted this to be the case in the simple majority resolution of gold claim disputes during the California gold rush.

[12] In **Figure 1**, curve **E** might be coincident with the abscissa, as mentioned previously

[13] Scholars have variously attributed this gradual weakening of constitutional constraint on a more activist Supreme Court, the establishment of a permanent civil service, expanded European immigration increasing the proportion of voters with corporatist experience and preferences, increased enfranchising inducing increased populism, and the imposition of the income tax as a revenue cornucopia.

[14] The US enjoys more political freedom as well because its government institutions can maintain a relatively more open political commons without excessive tragedy. This may be because of their composite, super-majority constraint that reduces rent seeking by reducing anticipated individual and/or interest-group payoffs from self-interested rent seeking without some genuine general-interest rationale and general- interest net gain. Other democracies often constrain common access to political allocation mechanisms by effectively privatizing or enclosing the commons that democracy creates (where the *de facto* title is held by some self-selected, and possibly self-perpetuating, political elite (In Canada, by its "Natural Governing Party" -- the Liberals! Or the "Court Party"! In the UK, not the Windsor Monarchy, but the "Oxbrigean Oligarchy"! In France, by the *Enarques*! And so on.)

Economic Freedom
The foregoing provides the setting for a modest experiment by suggesting the following hypothesis: The extent of government, or alternatively, the economic freedom of the private sector, ceteris paribus, is determined by the relative size of the *de facto* composite approval rule typically applicable in a country's governance. While the *de facto* composite approval rule may be difficult to measure in practice, the presence or absence of certain features of government structures might be indicators of its relative size. In particular, separate branches of government (executive, legislature, judiciary), executive veto, bicameral legislatures, a (con-) federalist structure, referendum and initiative all tend to create a balancing of factional competition and yield decisions only when there is a favorable super-majority or a consensus.

Our discussion of **Figure 1** and our hypothesis suggest that post constitutional rent seeking will be more limited (and therefore economic freedom increased) for countries with more *de jure* or *de facto* constitutional constraints.

A compilation of such *de jure* constitutional features for a large number of countries has been made by the Taubenfelds (1990) and we have successfully used this compilation in previous investigations (de Vanssay and Spindler, 1994, 1996).

In addition, other measures of checks and balances have been proposed by World Bank researchers (Beck, *et al.*, 2000). Essentially, they count "the number of veto players in a polity", such as the number of political parties in a coalition, the number of legislative chambers, etc. Of their alternative checks and balances measures, we use **CHECKS2A** which is available for more than 150 countries. As noted by Beck, et al. (2000), this variable is the most comprehensive measure and, from their perspective, it is a significant improvement over the Index of Political Cohesion from Roubini and Sachs (1989). Given their description, we expect that the Taubenfeld variables and/or the **CHECKS2A** variable, though there might be an overlap, should be positively related to the level of economic freedom.

Economic freedom indices are now available from alternative sources, calculated in alternative ways, but all encompassing some components that reflect the relative extent of government *vis-a-vis* the private sector.[15] The economic freedom indices we chose to use were those made available through the Fraser Institute's web site (Gwartney and Lawson, 2000). In particular, we used their latest (for the year 1997) and penultimate (for the year 1990) Freedom Indexes available at the time of our empirical analysis. **Table 1** summarizes the statistical characteristics of the data.

After a step-wise experimentation with the wide range[16] of constitution variables available for our sample of 97 countries,[17] with "Economic Freedom 1997" (**EF1997**) as the

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[15] For an analytical study of the links between the various indices of economic freedom, see Hanke and Walter (Table 4,1997)

[16] Besides various structural characteristics, like the presence of two legislative houses, a federal form of government, and the presence of a supreme court, there were a number of characteristics for constitutional guarantees of "negative rights", like freedom of religion, and "positive rights", like the right to housing, education, and medical treatment. Generally, countries that enumerated such positive rights seldom honor them in practice, so there is little surprise when these variables show no significant relationship with economic freedom measures, or even negative relationships with economic well being measures.

[17] These 97 countries are: Algeria, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Bolivia, Botswana, Brazil, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo Dem. Republic, Congo Republic of, Costa Rica,

dependent variable, we found that only a few[18] constitution variables had any significant relationship as independent variables. However, none of these constitutional variables provided much explanatory power by themselves or in combinations (See the weak **Adjusted R-squared** of **Equations 2, 4, 6** and **7** in **Table 2**).

We then used the lagged dependent variable, "Economic Freedom 1990" (***EF1990***), which as an independent variable, proved to be a quite powerful explanatory variable, essentially suggesting that: "Freedom begets freedom". Only one constitution-structure variable retained a significant relationship with the dependent variable once the lagged dependent variable was included as an independent variable. That variable represented one potential super-majority feature of the structure of government, namely having a bicameral legislature (See **Equation 3** in **Table 2**).

Another constitutional variable, not related to government structure, which retained some small explanatory power and statistical significance, was the one representing a constitutional guarantee of freedom of religion (See **Equation 8** in **Table 2**). This may seem puzzling, perhaps more so to the non-religious, until one considers the issue of constitutional maintenance and the requirements recently set out by Voigt (1998).

The essence of Voigt's argument is that: "A sufficiently large number of groups representing heterogeneous interests and having at their disposal some relevant threat potential can help sustain the rule of law… If [competing, opposing] interest groups are successful in preventing government and other groups from agreeing on exemptions from universalizable rules, they can become the unintended watchdogs of the rule of law." (Voigt, 1998, 204)

In an environment of religious pluralism that might flourish in the presence of constitutional religious freedom guarantees, or be directly responsible for such a constitutional enumeration, it would be difficult to imagine more heterogeneous groups whose interests are fundamentally irreconcilable by secular authority, or who would more jealously guard against concessions to opposing groups, than those various religious sects who pray to the same God in their own unique ways. These then might be quite likely candidates for applying an "invisible hand" in politics against discriminatory and "visible handouts" by government.

A constitutional enumeration of religious freedom might then be the one very essential negative right that could keep the constitution "working" to maintain, not only the rule of law, but also an effective super-majority. However, for those countries where religion has been effectively monopolized, a constitutional guarantee of religious freedom is more likely to enhance the religious bureaucracy's bilateral monopoly power relative to that of the state bureaucracy, with quite uncertain consequences for the rule of law and constitutional

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Cote d'Ivoire, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Gabon, Germany, Greece, Guatemala, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Mauritius, Mexico, Morocco, Myanmar, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Rwanda, Senegal, Sierra Leone, Singapore, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Syria, Taiwan, Tanzania, Thailand, Togo, Trinidad & Tobago., Tunisia, Turkey, Uganda, United Kingdom, United States, Venezuela, Zambia, Zimbabwe.

[18] These were Bicameral-- a (0,1) variable for the legislature having two houses, Federal -- a (0,1) variable for the government having a federal form, and Religion -- a (0,1) variable for the constitution enumerating freedom of religion.

maintenance. Thus, over a wide array of nations with different religious cultures, a religion variable with a significant positive effect might still be a bit surprising.[19]

Finally, we consider whether the World Bank's alternative measure of institutional checks and balances improves our specification as an addition to, or substitute for, the Taubenfelds' constitutional variables. First, in **Equation 10** "Economic Freedom 1997" is regressed against the World Bank's measure of "Checks and Balances" for the year 1990. As expected from the Buchanan and Tullock model, the coefficient is positive and statistically significant. Next, in **Equation 11** the lagged dependent variable "Economic Freedom 1990" is introduced as an independent variable. The statistical fit improves markedly as a result. Adding the "religious freedom" variable in **Equation 12** also yields a slightly improved fit as well as retaining the significance of that variable. Finally, the "bicameral" and "federal" variables are added and reported as **Equations 13** and **14** in **Table 2**. However, it is clear from the results for these equations, when compared with **Equation 12**, that there is too much overlap between the "Checks and Balances" and the "bicameral" and "federal" variables. Hence, in our judgement, the bicameral and federal variables are not useful additional explanatory variables.[20]

Equation 12 might well be chosen as the "winner" of the "explanatory power contest", though not overwhelmingly. **Equation 8** is also a "contender" that offers a slightly different perspective on constitutional constraint. However, both equations provide evidence that constitutions, either through direct enumeration or through the resulting checks and balances, matter to some small extent for economic freedom, as well as for some other important measures of economic well being and economic progress (See de Vanssay and Spindler, 1994, 1996).

Further, it might be argued that since some constitutions have been around for quite a while, they may have mattered more at some earlier stage before rent seeking innovations in constitutional interpretation and institutional collusion occurred. Thus, their cumulative influence today might well be measured by the level of the lagged dependent variable, or even better, by the changes in that variable after the "birth", and over the "life", of a country's constitution. If economic freedom and constitution variable indices could be extended back far enough, a time-series - cross-section analysis would then better show the importance of constitutional constraints, and even show their expected life span of constraint.

Concluding Remarks

Until such longer-term data are developed, casual observation, augmented by our interpretation of Buchanan and Tullock (1965) and our empirical results suggest that there is some wisdom in the Madison quote that leads off this paper. The second quote raises the issue of how such a constitutional balance initially occurs and/or is maintained in a rent seeking society. In our opinion, no better answer to this issue has been given than that

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[19] Though perhaps not to a reader of Becker (1997) who discusses Iannaccone's research in this regard. Iannaccone (1997) showed that greater religions competition was related to the intensity of a population's religiosity.

[20] Because we have added a variable (bicameral) whose coefficient's t-value is greater than one in Equation 13, the adjusted R-square has gone up over the one from Equation 12. This result is even more accentuated in Equation 14.

suggested by Buchanan (1980). Namely, that from time to time a "constitutional revolution" or "reform" occurs when it is in the joint interest of those rent-seeking or rent-protecting groups that compose the dominant coalition to "wipe the slate clean" of past rent-seeking deformations. Perhaps more rarely, they may also choose to constrain future deformations as well, by adding even more checks and balances, or a higher effective qualified majority requirement, as suggested by our extension of Buchanan and Tullock's constitutional analysis.

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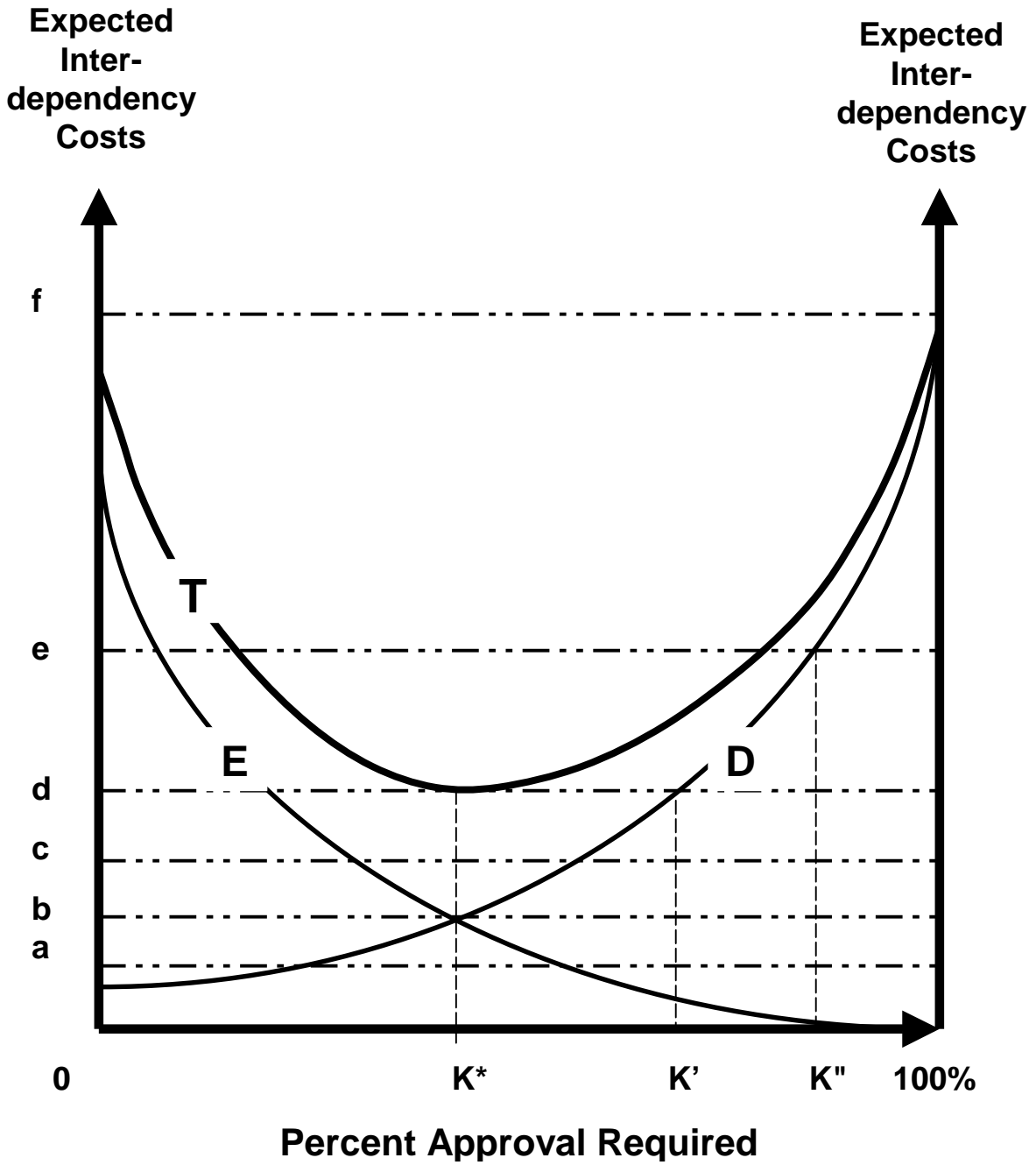
FIGURE1: CONSTITUTIONAL DECISION RULES AND RENT SEEKING COSTS

TABLE 1: DESCRIPTIVE STATISTICS:

Variable	Mean	Std. Deviation	Minimum	Maximum
Econ Freedom 1990	5.75	1.74	1.26	9.31
Econ Freedom 1997	6.63	1.66	2.13	9.41
Checks and Balances	2.42	1.63	1	8
Countries with a:				
- Federal system	8 (out of 97)			
- Freedom of Religion	63 (out of 97)			
- Bicameral System	32 (out of 97)			

TABLE 2: SELECTED REGRESSION RESULTS: Economic Freedom 1997 as the Dependent Variable * (97 Countries)

Equation #	Constant	Economic Freedom (1990)*	Bicameral**	Federal**	Religion**	Checks and Balances***	Adjusted R-squared	S.E. of Regression
1	2.03 (5.64)	0.8 (15.77)	-	-	-	-	0.699	0.915
2	6.14 (29.26)	-	1.48 (5.27)	-	-	-	0.17	1.51
3	2.14 (5.9)	0.75 (12.99)	0.48 (2.24)			-	0.712	0.89
4	6.5 (36.97)	-	-	1.52 (4.03)		-	0.055	1.61
5	1.98 (5.35)	0.81 (15.06)	-	-0.21 (-1.19)		-	0.696	0.92
6	6.05 (18.57)				0.90 (2.42)	-	0.059	1.61
7	5.74 (19.17)	-	1.37 (4.70)	-	0.68 (2.03)	-	0.199	1.48
8	2.03 (5.76)	0.74 (12.55)	0.44 (2.15)	-	0.32 (1.71)	-	0.717	0.89
9	1.98 (5.52)	0.75 (12.48)	0.47 (2.26)	-0.296 (-1.44)	0.30 (1.61)	-	0.716	0.89
10	5.5 (18.97)	-	-	-	-	.45 (4.75)	.191	1.48
11	1.93 (5.41)	.74 (13.31)	-	-	-	.18 (3.14)	.715	.881
12	1.83 (5.28)	.72 (12.43)	-	-	0.35 (1.85)	.178 (3.2)	0.722	0.87
13	1.92 (5.34)	.7 (11.2)	.26 (1.39)	-	.34 (1.79)	.15 (3.07)	.723	.87
14	1.83 (5.05)	.72 (11.33)	.29 (1.5)	-.41 (-1.75)	.31 (1.62)	.16 (3.31)	.724	.87

Notes:
* Source: The Fraser Institute (Jan. 2000).
** Source: Taubenfelds (1990).
*** Source: Beck, Clarke, Groff, Keefer, Walsh (CHECKS2A, July 1999). Hong Kong not included.
Corrected for heteroskedasticity using White's heteroskedastic –consistent covariance matrix estimation. Numbers in brackets indicate *t*-values.