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Constitutional Rules and Political Incentives: Buchanan and the Limits of Democratic Discretion

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Abstract
Modern democratic governments increasingly rely on discretionary decision-making to address complex social and economic problems. Although discretion can improve administrative flexibility, it also raises concerns about accountability, predictability, and the concentration of political authority.
Drawing on the work of James M. Buchanan, this article suggests that political and administrative behavior is shaped by the incentives embedded within institutional structures. When the constraints that regulate behavior are weak or poorly defined, discretionary authority tends to expand.
Placing Buchanan within the broader tradition of classical political economy, particularly the contributions of Adam Smith and Friedrich Hayek, the analysis highlights how rule-based governing supports economic and social coordination while maintaining democratic legitimacy. It also examines contemporary regulatory systems, where increased administrative discretion is subject to political influence and the pursuit of economic advantage.
Effective democratic governance, the article argues, depends not only on policy outcomes but on stable constitutional rules that limit discretion and support long-term institutional stability.

Introduction

Modern democratic states are increasingly characterized by the expansion of administrative authority and a growing reliance on discretionary decision-making. Legislatures routinely delegate authority to regulatory agencies that interpret statutes, develop rules, and manage complex policy issues. While this delegation reflects the realities of modern governance, it also raises concerns about accountability, predictability, and concentration of political power.

These concerns reflect a longstanding dilemma in political economy: how to reconcile the need for governmental flexibility while ensuring institutional constraint. Discretion enables governments to respond to changing conditions but also introduces uncertainty and the potential for opportunism.

The discussion that follows considers this problem through the work of James M. Buchanan (1919–2013) and his theory of constitutional political economy. The analysis suggests that political behavior reflects incentives embedded in institutional rules, and that administrative discretion expands systematically and predictably when those rules are weak. By situating Buchanan within the broader intellectual tradition of Adam Smith and Friedrich Hayek, the paper contributes to ongoing debates regarding rule-based governing and the institutional foundations of democratic legitimacy.

Effective democratic governing depends not only on electoral accountability but also on stable, predictable constitutional constraints. In their absence, discretionary authority tends to expand, undermining both institutional trust and long-term stability.

Analytical Framework

The approach taken here assumes that governing is a system shaped primarily by rules rather than intentions. From this perspective, political and administrative outcomes reflect the incentive structures embedded in institutional systems rather than policymakers' goals.

The analysis proceeds in three stages. First, it situates Buchanan within the classical tradition established by Smith (1776/1976) and Hayek (1960; 1973), both of whom emphasized the importance of general and predictable rules. Second, it examines Buchanan's public choice theory and its implications for political behavior. Third, it evaluates Buchanan's distinction between the development of constitutional rules, their application, and how they shape incentives over time.

Classical Political Economy and Institutional Rules

Classical political economy emphasized the role of stable rules in maintaining economic and social order. Smith (1776/1976) argued that markets depend on institutions that protect property rights and enforce contracts. Justice, understood as the impartial application of general rules, forms the basis of social cooperation.

Hayek (1960; 1973) extended this insight by emphasizing the limits of centralized knowledge. In complex societies, knowledge is widely dispersed among individuals. Effective coordination, therefore, depends on general rules that allow individuals to act on local information.

Rule-based governing enables individuals to form expectations, coordinate behavior, and plan for the future. It also limits arbitrariness, making predictability a key feature of social order. Buchanan (1975) applies this line of reasoning to political systems. While Smith and Hayek focused primarily on markets, Buchanan examined how institutional rules shape political incentives. Contemporary research supports this view, linking stable and impartial institutions to higher levels of trust and more effective governance (Acemoglu & Robinson, 2012, 2019; North, 1990; Rothstein, 2021; Mungiu-Pippidi, 2020).

Public Choice and Political Incentives

Public choice theory applies economic reasoning to political behavior. It assumes that individuals respond to incentives regardless of institutional setting (Buchanan & Tullock, 1962). This approach challenges the idea that public officials primarily pursue the public good. Instead, politicians, bureaucrats, and organized groups respond to electoral pressures, budgetary incentives, and opportunities for influence.

When institutions permit broad administrative discretion, these incentives tend to produce predictable behavior. Governments may expand programs, increase spending, and direct benefits toward specific constituencies, while regulatory agencies seek to extend their authority and resources.

These outcomes are better explained by institutional structure than by individual shortcomings. When constraints are weak, incentives tend to favor expansion, selective benefits, and strategic behavior. In practice, this often appears as political advantage-seeking, in which individuals or groups pursue economic gains through political favoritism rather than productive activity (Krueger, 1974; Tullock, 1967). This behavior diverts resources, distorts policy objectives, and reduces efficiency.

Empirical research supports these conclusions, emphasizing the role of institutional design in shaping governing outcomes (Furubotn & Richter, 2018). At the same time, increased reliance on discretionary decision-making is associated with declining institutional trust and increased political polarization (Hetherington & Rudolph, 2015; Rothstein, 2021).

Constitutional Political Economy

Buchanan's central contribution lies in his distinction between constitutional and operational decision-making (Buchanan & Tullock, 1962). At the constitutional level, societies establish rules that govern political processes, whereas at the operational level, government officials make decisions within those constraints.

The timing of decisions is central to this distinction. At the constitutional stage, individuals face uncertainty about their future, which tends to favor the adoption of general, impartial laws rather than rules tailored to specific outcomes. At the operational stage, incentives often shift toward behavior that benefits special interests.

Constitutional constraints limit discretion, reduce uncertainty, and align incentives with long-term institutional stability. Recent research on state capacity similarly emphasizes that durable governance depends on rule-based institutions that limit arbitrary authority while ensuring effective policy implementation (Besley & Persson, 2023).

The Administrative System and the Expansion of Discretion

Institutional Growth and Delegation

In modern democratic states, legislatures increasingly delegate authority to regulatory agencies that implement policy. While delegating authority improves administrative capacity, it also reduces accountability and increases reliance on administrative judgment (Epstein & O'Halloran, 1999). Research suggests that expanding regulatory governance increases policy complexity, favoring delegation over direct legislative control (Johnson & Libecap, 2020). From Buchanan's perspective, this shift reflects a predictable response to institutional complexity coupled with limited constitutional constraints.

Bureaucratic Incentives and Expansion

Public choice theory suggests that administrative agencies respond to incentives that promote growth, such as larger budgets, expanded authority, and greater organizational influence. Over time, these incentives lead to more complex regulations and greater reliance on discretion.

As administrative systems become more complex, rules increasingly require interpretation, elevating the role of administrative judgment and reducing predictability.

Political Influence and Regulatory Outcomes

The expansion of administrative discretion creates opportunities for organized groups to influence regulatory outcomes. Agencies operating with broad discretion are particularly susceptible to these pressures (Carpenter & Moss, 2014; Carpenter, 2021).

From a constitutional and political economy perspective, this reflects a shift away from general rules toward case-specific decisions that benefit special interests. Over time, regulatory systems may shift from coordination to mechanisms for distributing political advantages, thereby reducing efficiency and weakening public confidence.

Executive Action and Institutional Drift

Executive action has become an increasingly prominent feature of modern governments. Executive orders and administrative rulemaking allow for rapid responses to policy challenges, particularly when legislative processes are slow or gridlocked. At the same time, these mechanisms contribute to the gradual expansion of administrative discretion. As reliance on executive action increases, the distinction between rule-based governing and discretionary decision-making becomes less clear.

This process, often described as institutional drift, moves governance away from stable rules and toward case-by-case decisions, reducing predictability and increasing uncertainty for individuals and organizations.

Reasserting Constitutional Constraints

Addressing these challenges requires reasserting constitutional limits. This includes clearer statutory boundaries, reduced reliance on discretionary authority, and stronger oversight.

From Buchanan's perspective, the goal is not to eliminate administrative governance but to ensure that it operates within clearly defined institutional boundaries. Reinforcing rule-based systems can improve predictability, limit opportunism, and strengthen institutional legitimacy.

Constitutional Rules and Democratic Legitimacy

Democratic legitimacy depends not only on electoral participation but also on stable and predictable institutional rules. When governing operates within clear and consistent limits, individuals can form expectations about how political authority will be exercised. Hayek (1960) described this condition as the rule of law. General and consistently applied rules enable individuals to plan and act with confidence, supporting both economic coordination and social trust.

Evidence from recent studies supports this relationship, showing that institutional trust is closely tied to perceptions of fairness, impartiality, and consistency (Rothstein & Varraich, 2017; Rothstein, 2021). Research further indicates that high-quality governing depends on the consistent application of rules rather than discretionary enforcement (Mungiu-Pippidi, 2020). When governing relies on administrative discretion, outcomes often appear biased or inconsistent, weakening trust and contributing to political polarization (Hetherington & Rudolph, 2015).

The connection between rules and legitimacy is therefore a central concern. Democratic systems require not only participation but also meaningful constraint. In the absence of stable rules, even well-intentioned policies can undermine confidence in governing institutions.

Conclusion

Buchanan offers a useful way to understand how institutional rules shape political incentives and governing outcomes. By emphasizing the role of constraints, his work extends the insights of Smith and Hayek into the analysis of modern democratic systems.

When institutional limitations are weak, administrative discretion tends to expand in predictable ways. This behavior is not accidental; it follows from the incentive structures built into political institutions. In today's governing, where administrative and executive authority continue to grow, this dynamic becomes especially important.

Democratic legitimacy ultimately depends on more than effective policy outcomes. It also depends on stable and predictable rules that limit discretion, align incentives, and support long-term institutional stability.

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