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RESEARCH PAPER

Containing Ideological Rent Seekers Expanding the Reach of Buchanan's Constitutionalism

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Abstract

One of the central aims of James Buchanan's long and fruitful career was to identify constitutional rules that could contain rent seeking. A central task for constitutional theorists is to identify constitutional rules that prohibit or limit rent seeking, in order to ensure that a society's economic system benefits all and preserves their liberty. However, there is a related, but equally dangerous phenomenon that Buchanan does not explicitly address as a variant of rent seeking: the attempt by sectarian groups to capture governmental apparatus to impose their values on others. The goal of these ideologues is not economic gain, but evaluative gain. Co-opting state power, they force those with different values to share or at least submit to their own sectarian vision of the good society. Like rent seeking, this activity tends to undermine the gains from trade in a market order. These activities give the sectarian an unequal gain in utility and may impose a utility loss on others. In this broad sense, sectarian ideologues collect a rent. If we can specify the sense in which ideologues collect a rent, we can expand the reach of Buchanan's research program. Towards this end, I develop an account of what I shall call ideological rent seeking and the ideological rent seeker. I then extend Buchanan's approach to constitutional choice to cover the mitigation of ideological rents. The best constitutional rules are those that constrain a weighted sum of economic and ideological rent seeking.

Keywords Rent-seeking · Public choice · Ideology · Contractarianism · James Buchanan · Gordon Tullock · Liberalism

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1 Introduction

One of the central aims of James Buchanan's long and fruitful career was to identify constitutional rules that could contain rent seeking, which occurs when self-interested groups attempt to redistribute gains from trade to themselves by co-opting state power. Rent seeking occurs, for instance, when companies pursue tariffs to protect themselves from competition, or when an official or lobbyist seeks a subsidy paid for by taxing someone else. Rent seeking frequently leads to unproductive activities through the dissipation of rents, which has a tendency to compound over time, and typically involves the use of state power to coerce, limiting liberty. A central task for constitutional theorists, then, is to identify constitutional rules that prohibit or limit rent seeking, in order to ensure that a society's economic system benefits all and preserves their liberty.

Besides standard rent seeking there is a related, but equally dangerous phenomenon that Buchanan does not explicitly address as a variant of rent seeking: the attempt by sectarian groups to capture governmental apparatus to impose their *values* on others. The goal of these *ideologues* is not economic gain, but *evaluative* gain.[1] Co-opting state power, they force those with different values to share, or at least submit to, their own sectarian vision of the good society. Like rent seeking, this activity tends to undermine the gains from trade in a market order. Market orders allow people to live out their own values and to contract with others to do so, but sectarian coercion restricts people's abilities to cooperate with others to realize their diverse values. These activities give the sectarian an unequal gain in utility and may impose a utility loss on others. In this broad sense, sectarian ideologues collect a rent.

If we can specify the sense in which ideologues collect a rent, we can expand the reach of Buchanan's research program. Towards this end, I will spend most of this essay sketching what I shall call *ideological rent seeking* and the *ideological rent seeker*. If these ideas prove coherent, extending Buchanan's program will be straightforward: the best constitutional rules are those that constrain a weighted sum of economic and ideological rent seeking, among other things.[2]

What I propose, in short, is to understand an ideological rent seeker as an agent possessing both ordinary economic preferences about her material interests and *ideological* preferences concerning how an agent wishes to shape her social world in accord with her worldview and values. Thus, I propose to build ideological values into the utility function of agents in an economic and political system, including in scenarios of constitutional choice. We can then derive a complete utility function for each agent by aggregating her economic utility function—her ranking of economic preferences—with her ideological utility function—her ranking of ideological preferences. While some economists are bound to resist the very idea of an

[1] Which may serve as a means towards economic gain, but need not.

[2] Here I intend not so much to bring out an implicit line of reasoning in Buchanan's project, but I do think that Buchanan's general worries about people imposing their values on others makes the extension of his analysis to cover the case of ideology is a natural one.

ideological utility function, I will take for granted what I regard as a fundamental truth about utility analysis, namely that is primarily a kind of consistency requirement for preferences and has nothing to say about what may be preferred or chosen. Thus, ideological preferences are as much at home in utility analysis as preferences over material interests.

I will begin the essay by introducing the ordinary notion of economic rent seeking (2) and outlining a conception of ideology suitable for extending the idea of rent seeking to sectarian, ideological behavior (3). I next define ideological rent seeking and outline some examples of it (4). I then explain how the idea of ideological rent seeking gives Buchanan's analysis of rent seeking greater analytical power (5). I next outline how Buchanan's social contract theory should expand in light of ideological rent seeking (6), and I address some difficulties that ideologues pose for a Buchananite constitutional choice (7).

2 Rent seeking

Rent seeking occurs when a company, organization, or individual uses its resources to obtain an economic gain from others without reciprocating any benefits back to them or society through wealth creation. On Tullock's (2005a, b: 171) definition of rent seeking, it involves,

> … using resources to obtain rents for people where the rents themselves come from something with negative social value. For example, if the (Canadian) automobile industry invests resources to get a tariff on Korean cars, then this makes Canadian citizens worse off. Hence, even though the automobile companies will gain, such investment of resources is rent seeking.

For Tullock, then, what distinguishes rent seeking from other attempts to secure wealth or utility for one's self is to pursue wealth in a way that has "negative social value" (9). Tullock elsewhere defines the rent seeker as seeking rents in ways that "will not actually improve productivity, or will actually lower it, but that does raise his income because it gives him some special position or monopoly power" (104). The Korean automobile tariff benefits Canadian workers while reducing value for Korean automakers and Canadian consumers. Similarly, logrolling between Canadian legislators constitutes rent seeking "when the trades are used to produce wealth-reducing commodities like the farm programme or to maintain useless army posts which are surrounded by moats …" (34).

A critical feature of rent seeking is that economic rents can be sought via *artificial*—typically political—restrictions on the market. In the Korean tariff case, the Canadian government politically increases scarcity or creates an artificial shortage, that goes beyond the normal effects of supply and demand. Rent seeking, then, "is the expenditure of scarce resources to capture an artificially created transfer" (Tollison 1982: 578). While the idea of an "artificial" shortage may seem to have the problematic implication that markets in, say, automobiles are "natural," we mustn't read too much into this but should simply focus on the fact that the fundamental

coercive power of government is employed by competitors to further their particular interests. Rent seeking results when actors have the option to use resources that they might not have otherwise employed to compete for an economic rent that is created by coercive government intervention to block or restrict the exchange of goods and services.

To further clarify, consider some paradigmatic cases of rent seeking expenditures (Buchanan 1980: 12–14) that may be "socially wasteful" by Dennis Mueller (2003: 34):

1. The efforts and expenditures of the potential recipients of [a] monopoly rent.
2. The efforts of the government officials to obtain the or to react to the expenditures of the potential recipients.
3. Third-party distortions induced by [a] monopoly … or the government as a consequence of the rent seeking activity.

These expenditures are socially wasteful because they are spent purely for the redistribution of revenue from another economic purpose but could have been spent to create rather than merely to capture value. The artificial shortage creates waste, as does the competition to capture the rent. In strict monetary terms, seeking rent, as opposed to mere profit-seeking, is an attempt by a group or its allies to benefit the group at the expense of others through monetary transfers backed by legal coercion (overall reducing the wealth of the rent seeker's society).

3 Ideology

To explain ideological rent seeking, we also need an analysis of ideology. I will understand an ideology as a set of models about how social institutions function, and principles and values concerning how they should function.[3] Ideologies are groups of ideas, then, that imply that social life should be organized in some ways and not in others. Denzau and North (1994: 4) define ideologies as "the shared framework of mental models that groups of individuals possess that provide both an interpretation of the environment and a prescription as to how that environment should be structured." Hinich and Munger (1996: 11, 62) define ideology similarly, as "an internally consistent set of propositions that makes both proscriptive and prescriptive demands on human behavior."[4] For Hinich and Munger, ideologies also have implications "for (a) what is ethically good, and (therefore) what is bad; (b) how society's resources should be distributed; and (c) where power appropriately

[3] I follow North (1991: 97) in describing institutions as "the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)." Or as Denzau and North (1994: 4) note, "institutions are the rules of the game of a society and consist of formal and informal constraints constructed to order interpersonal relationships."

[4] Though, in contrast to North, they appear to omit an interpretation of the environment from the definition of an ideology; here I side with North.

resides." In short, an ideology is a set of models or propositions that specify how our social world should be structured.[5]

Based on the foregoing, I will understand an ideology as a broadly coherent doctrine that can be used by those who seek to partition and control *social space*—states of affairs that denote patterns of large-scale social behavior. An ideology is based on a set of beliefs and values that *specify an ordering of prospects deemed feasible by the ideology* for organizing that social space. We can therefore define one's *ideological preferences* as one's ordering of what one thinks are feasible arrangements of social space based *solely* on one's ideology. We always have personal preferences, or preferences over what we regard as feasible prospects for direct consumption or enjoyment, but those who affirm ideologies will have preferences over how the social world they live in is structured. Obviously, ideological preferences and personal preferences might conflict. For example, imagine that John Engels is the communist son of a wealthy industrialist. John may have personal preferences to use his income to enjoy various consumption goods, but his ideology requires that the capital that generates his income be redistributed to workers, such that realizing John's ideology will prevent him from satisfying some of his personal preferences.

We can further illustrate ideological preferences by means of the well-known case of Lewd and Prude developed by Amartya Sen (1970).[6] In Sen's case, Prude wants to prevent Lewd from reading an erotic novel. Prude's aim, then, is to partition the social space that presently allows Lewd to choose to read an erotic novel in such a way that Lewd no longer has the feasible option of reading the novel. Prude has a preference over what Lewd does. Ideologies can helpfully be understood as shared mental models that specify such rankings. They specify a ranking over how society is to be organized—a ranking of the set of the choice options for all members of society. Prude's puritanical ideology leads him to rank the state of affairs where Lewd is prevented from reading an erotic novel above all states of affairs where Lewd is permitted to read the novel. And this will be Prude's *ideological* ranking even if, personally, Prude hypocritically uses erotica to satisfy his personal desire for pleasure. Prude might then publicly propagate his ideology to garner a critical mass of supporters whose actions and approval are then coordinated into an effective movement for changing the rules of social interaction.

Importantly, the desire to control social space can be mediated by other concerns. An ideological ranking might cover what we could call "belief space" or the beliefs that persons have about appropriate behavior. Prude might want to prevent Lewd from reading an erotic novel, but he may also want to convince Lewd that reading an erotic novel is immoral. Alternatively, Prude may simply be happy for Lewd to parrot Prude's views in public, a kind of preference falsification (Kuran 1987). We need

[5] The one important difference between the two definitions is that Denzau and North hold that ideologies provide an "interpretation of the environment" such that ideology has a descriptive element, while Hinich and Munger do not. For our purposes, we need not settle this dispute. For a related but distinct analysis of ideology, as found in political theory, see Freeden (2003: 32).

[6] Here I appeal to Sen's case, but I take no stance on his liberal paradox.

not settle on a particular form of mediation here, instead allowing for a multiplicity of relations.

For a third illustration of ideological preferences, recall that one of the classic cases of rent seeking is the bootlegger's pursuit of alcohol prohibition; the bootlegger benefits economically from the artificial restriction of alcohol production by legal prohibition; he collects an economic rent. Ideological preferences allow us to model the bootlegger's ally, the Baptist, who pushes for prohibition because she values controlling others' capacity to consume alcohol for non-economic reasons. If the notion of ideological preferences is coherent, then, we may be able to generalize the analysis of rent seeking. There is a real sense in which the bootlegger and the Baptist are doing the *same thing:* both "gain" from laws that restrict others' freedom and create artificial shortages.[7]

This is the sense in which an ideological *rent* is on a par with an economic rent. The bootlegger gets the economic rent of higher profits from selling alcohol than she would have in a less coercive environment, that of a competitive market, whereas the Baptist gets the ideological rent of higher satisfaction of her ideology than she would have in a liberal order that allowed each person to choose to consume alcohol or not.

We can then understand an ideological *ordering* as a ranking over how society should be organized, that is, preferences over the size and quality of the feasible choice sets of all agents in that society. The shared mental model of the ideology, along with its overall features as a recurring pattern of ideas and attitudes with some degree of internal consistency between beliefs, values, and interpretations of political concepts, comprises the reasons that determine the weak ordering of states of affairs.[8] Other factors affecting the ordering might include considerations of feasibility and the relative costs of establishing some ideological aims rather than others. Taken together, these evaluative considerations justify the preferences in the ideological ordering; these considerations thereby become part of a utility function (understanding "utility" simply as a representation of preference orderings and not as a reason for preferring).

I will understand an *ideologue* as a person whose ideology plays a predominant role in structuring her ordering of states in social space, such that, in cases of conflict, her personal preferences are often overridden by her ideological preferences. John Engels is an ideologue if and only if, when given the opportunity, he would sacrifice a significant amount of his personal preferences, say a large portion of his income in the name of establishing his ideology, such as creating a communist society, without his ideological preferences relying upon a deeper desire for economic

[7] Yandle 1983, p. 13. It is also true that those who gain materially can benefit from disseminating the relevant ideology, so the bootlegger benefits materially from the propagation of Baptist views on alcohol.

[8] To simplify, I here set aside the question of whether an ideology solely prescribes an ideal social arrangement vs. whether it also prescribes a path from present circumstances to the ideal social arrangement. Further, some ideologies, perhaps conservatism, deny that we can discern an ideal social arrangement and focus instead on resisting movement to proposed but potentially false ideal social arrangements. For a fine treatment of these issues, see Gaus (2016).

gain.[9] Engels's ideological commitments lead him to care more about a revolutionary redistribution of his income than enjoying the consumption goods procured by his income.

Notice that ideologies are typically exclusivist in that realizing one ideology prevents the realization of another. Some ideologies call for the repression of alternatives, while others suggest defeat via persuasion. But either way, in most real-world cases, ideologies are anti-pluralist. They seek to monopolize ideological space and to limit or dissolve the political and social power of other ideologies. Their inherent quest for a monopoly in conviction space makes them naturally inclined to use the coercive power of the state to limit the freedom of others. Ideological conflicts are therefore often zero-sum. Given sufficient ideological diversity in a free society, then, ideologues will have a go at one another constantly; those with weak or no ideological commitments will often be caught in the crossfire.

There may be radical ideologues who are willing to make very costly sacrifices in terms of their personal orderings in favor of reaching ideologically superior results. They will typically form a minority of voting citizens and possess relatively high social status. There will be very few *pure* ideologues, people who act solely based on their ideological ordering. In general, even extreme ideologues will have an ideological ordering *and* a personal ordering.[10] We can model these two orderings by appealing to a combined ordering that specifies the relationship between the two rankings. Sen (1977) has promoted a related analysis, following John Harsanyi (1955), who describes persons as having both a personal utility function and a social/ethical utility function. The combined ranking explains how agents choose between options in both orderings.

4 Ideological Rent Seeking

We can now define ideological rent seeking. John engages in ideological rent seeking when,

(i) He uses his resources to gain control over social space in order to conform social institutions to his ideological ordering, and,
(ii) He does not attempt to allocate sufficient social space to those who either do not share or reject his ideology, as occurring,
(iii) Under coercive legal conditions that make pursuing ideological rents inherently a zero or negative sum rather than positive sum game.

[9] Here then I assume that ideologues aren't in it for the money, in the end. Their ideological preferences yield intrinsic value for them, and not primarily instrumental value.

[10] Here there is a relationship between an ideological ordering and a person's moral concerns as motivating voting behavior in the theory of expressive voting advanced by Brennan and Lomasky (1993), which I speak to further below.

Resources can include money, physical capital, and even social capital, such as one's reputation as a political activist. Social space is society's choice space, the set of ways in which a society's political and legal institutions can be feasibly organized; the ideological rent-seeker wants her group and those who share her ideology to adopt the role of social dictators reigning over the feasible choice sets of all agents in her society. She may even want to control the public expression of others' views, and to change their opinions, though these further measures are not essential. Finally, the *seeking* of ideological rent occurs under conditions of artificial scarcity where legal restrictions prevent persons from simultaneously satisfying their own ideological preferences. The ideological rent-seeker seeks a particular distribution of social control that is either gained via redistribution from previous controllers, or by controlling new social space generated by expanding choice options, such as the choices brought about by innovation and the presence of new products.

The Baptist of the previous prohibition-example is the paradigmatic ideological rent-seeker. By imposing a ban on alcohol, she seeks to realize her ideology by denying others the choice to use alcohol, which violates a variety of other ideological points of view, such as liberal ideologies that prize individual autonomy. The ideological rent-seeker doesn't just place people in a worse position with respect to their ideological ordering, but often with respect to their personal ordering as well. The redistribution of social space, and its attendant loss of subjective value, either from another person's ideological or personal ordering, means that the Baptist is like the bootlegger. The bootlegger and the Baptist both seek special privileges from the state at the expense of others. The bootlegger seeks protection for his business, while the Baptist seeks the victory of her ideology.[11] The cases of John Engels and Prude above are similar cases of ideological rent seeking.

We can contrast ideological rent seeking with attempts to realize the aims of one's ideology via voluntary exchange or through the imposition of laws that realize the goals of multiple ideologies concurrently. In seeking to realize his ideology, John does not always have to wrest social control away from others. There may be several feasible legal regimes that advance his ideology and the ideology of others. For instance, ideologies typically oppose harms to others, such as damage to their bodies, creating a coincidence of interests in these ideologies. And so laws protecting people from these harms advance the ideological goals of several groups at once, and so all allow diverse people to better conform the world to their ideological ordering. Consequently, attempts to pass legal safeguards, which serve to realize Pareto improvements across ideological perspectives, do not count as ideological rent seeking, even though they are ideological *activities*. Condition (iii), requiring artificially scarce social space created by legal coercion, is not met.

[11] Though this is perhaps not entirely fair to the Baptist, who might believe that banning alcohol can be justified independently of her religious ideology. The important question is whether she could continue to push for prohibition even if she lacked this belief. If she would push for prohibition anyway, then she counts as an ideological rent-seeker.

5 A Gain in Analytical Power

We can model a great deal of political activity as ideological rent seeking. Prohibition movements supply some simple cases. As noted above, the prohibitionist seeks to realize her ideology by using the law to prohibit others from having feasible options to consume alcohol. We can also understand ideological revolutions as direct forms of rent seeking. Gordon Tullock (2005a) famously argued that ideological revolutions are led by elites who collect massive rents when they come to power.[12] We can extend his analysis by arguing that revolutionaries gain both personal *and* ideological rents. This gives us a more plausible and complex model of the motivations of revolutionaries, as revolutionaries often believe their own hype, and so gain utility—utility as defined by their ideological ordering—from political success. So the subjective value enjoyed by a successful ideological revolutionary is not merely her newfound power, prestige, and cash, but the imposition of her ideology on society.[13] The cynical revolutionary often cares more about the former kinds of goods, whereas the "true believer" cares more about collecting ideological rents. But there is an important, clear sense in which they are both rent seekers (Tullock 2005b).

We must not make too little of ideological orderings in explaining behavior, since we know that many committed ideologues value the realization of their ideology so much that they will sacrifice their lives to impose[14] their ideology on others.[15] These highly committed ideological groups can be modelled in terms of an ideological ranking that is much weightier than their personal rankings. By construing ideologues as weighting their ideological ordering greater than the personal ordering, or at least weighting their ideological ordering much more heavily than most people do, we can predict the risky, violent behavior of political activists that stand to gain little economically from their activities, because they have the opportunity to realize their ideology.

Another use for ideological rent seeking is to model attempts to capture judgeship positions in ideologically charged environments, such as the appointment of federal judges in the United States. A major part of electoral and congressional politics in the United States is concerned with the appointment of judges who hold a particular ideology and are opposed to other ideologies. Attempts to appoint "conservative" or "liberal" Supreme Court justices are attempts to use the coercive power of the

[12] North et al. (2013) argue that political violence is ended when privileged groups are given payments and privileges; the concept of ideological rent seeking can extend this idea. Ideological revolutionaries can be bought off with policies that implement their ideology, reducing the risk of revolution.

[13] Or at least those parts of society who oppose the ideology; some revolutions are bound to be more popular than others even when they are led by an elite class of ideologues.

[14] As noted above, imposition can involve a simple restriction of the activity of others, but might be more ambitious in seeking to squelch dissent and even opinion change.

[15] The revolutionary helps us to understand why the ideological rent-seeker is not seeking mere psychic benefits. The revolutionary is often ready to put her life on the line to satisfy her ideological ordering. If the revolution succeeds and she dies, her ideological ordering is satisfied even if she gains no psychic benefits from seeing the revolutions succeed.

judiciary to realize the ideology of the dominant political party at the expense of the ideology of the opposition party. Supreme Court justices seldom play a direct role in the redistribution of material resources, but they are an important way that ideological rents are distributed in the United States, such as ideological commitments on various types of rights, such as abortion rights, gun rights, civil liberties, voting rights, rights to free exercise of religion, and rights against discrimination. Supreme Court politics is rent seeking politics because it deploys the monopoly power of the state to structure social space, either simply to restrict the liberty of others, or more insidiously, to prevent other ideas from being disseminated or even believed.

Ideological rent seeking also helps us to make sense of certain voting patterns. Sometimes ideologues seek economic gains for ideological reasons, and so what many economists might first see as the collection of economic rents are in fact the collection of ideological rents. Many who support free-trade restrictions benefit from them economically, such as steel companies that support steel tariffs. And politicians often celebrate tariffs as protecting American workers, and so make tariffs popular among their constituents. But some voters collect ideological rents because many voters are nationalists. They will pay higher prices due to steel tariffs, but they may achieve social states that are more highly ranked in their ideological ordering, which they will sometimes weigh more heavily than their personal ordering. Given a nationalist voter's ideological utility function, she benefits from the tariff, whereas on her personal utility function, she pays. But if the ideological ordering is more favored by her compound ranking, then she will gain net utility from the tariff. Similar cases arise when voters are able to impose preferred visions of social and economic justice. Certain special interest groups will benefit, and in a few cases, the least-advantaged will benefit as well. But supporters of these measures can be modeled as structuring society according to their ideology and deriving value from successful ideological reforms and legislation. This explains why many people support economic ideologies that do not promote their self-interest or the general welfare; politicians, lobbyists, and voters have ideological orderings.[16]

Here it may be worthwhile to note that the theory of ideological rent seeking in voting patterns will have to come to terms with the arguments for analyzing voting behavior as expressive (Brennan and Lomasky 1993). One might initially think that expressive voting is a kind of ideological rent seeking. However, part of the motivation for expressive voting is that voters realize, at least implicitly, that they do not impact outcomes. And, so, if voters do not really believe that their votes matter, then perhaps they are not engaging in ideological rent seeking when they vote for their preferred ideology. Strictly speaking, then, expressive voting and ideological rent seeking are distinct phenomena, even if they are both present in a single political act, like voting or legislation. So, voters can engage in ideological rent seeking; but to do so, they must believe their votes are effective, either in themselves, or perhaps in concert with the votes of others. And, of course, even if voters seldom engage in ideological rent seeking, special interest groups, parties, presidents, etc. do so frequently.

[16] Or, perhaps those who, through self-deception, believe in the ideologies that further their interests.

6 Buchanan's Liberal Constitutionalism

The essence of Buchanan and Tullock's (1962) contract theory is to construct a choice situation in which people with diverse, and often self-interested goals lack the information to rig the choice of constitutional rules in ways that allow them to profit at the expense of others. The basic move is that, since everyone knows they could end up in the minority, or as the victim of rent seeking, and they cannot know how they will fare under constitutional rules that permit rent seeking, they will probably not gamble in order to establish constitutional rules that they can manipulate. Buchanan thought that, in modeling constitutional choice in this way, we do not need many fairness-based constraints on choice to find rules that work to the benefit of all, in contrast to John Rawls (1971).[17]

Buchanan and Tullock's (1962, 76) goal in formulating a choice of constitutional rules is to minimize two kinds of cost: external and internal. The external costs of a constitutional rule are the costs of various laws and policies created by the constitutional rule when it is put in effect against the will of the representative choice maker; external costs include the costs of rent seeking. Buchanan also wants to reduce internal costs, that is, the costs of creating a coalition that can ratify legislation. The overall aim in selecting constitutional rules is to minimize the sum of external and internal costs, which Buchanan thinks leads to the choice of supermajority voting rules. This should reduce, though not eliminate, economic rent seeking.[18]

We can extend Buchanan's contract theory to justify constitutional rules that reduce the risks and effects of ideological rent seeking. If we add the costs of ideological rent seeking to the costs of economic rent seeking, then the external cost to be minimized is some kind of sum of these two costs. The same states of affairs must be doubly evaluated, therefore, by whether they provide ideological gains and economic gains. It may be that these two costs thwart one another when a person's ideology requires that she take an economic loss. So combining the two sets of costs is not a simple matter. Nonetheless, the proper constitutional rules will be those that properly combine economic and ideological dimensions, so as to minimize the sum of overall rents—economic and ideological—combined with minimizing other kinds of costs (like the cost of implementing public policies).

We thus introduce ideological rent seeking into Buchanan's theory in a natural way. And it provides Buchanan's theory a more general and universal subject matter than when it is focused on economic rent seeking alone. For we will have a constitution that also restricts attempts by sectarian groups and ideologues from seizing

[17] Buchanan's moral constraints seem to come down to giving all parties a veto over collective decisions, acknowledging the authority of collective decision when it occurs, and interpreting these constraints as modes of interpersonal respect. These conceptual vetoes can be quite strong, and may even eventuate in the selection of a great priority for liberty, but the veto is not set up so as to ensure that outcome, as it arguably is in Rawls.

[18] Though there is a complication. Much of the interpretation and enforcement of the constitution may be off-loaded onto the judiciary, which protects private rights, that are, in turn, used to decentralize social choices to small groups and individuals. But this creates an incentive to game the judiciary. Ideological rent seeking may be particularly problematic among federal courts, as I noted above.

power, then using it to dominate and control the behavior of others. Perhaps this will come from an alteration in voting rules, such as adopting supermajority rules, or bicameralism, or perhaps through more straightforward constitutional amendments. One alternative, explored below, is to have a more federal system that allows ideologues to sort into like-minded groups.

The rationale for liberal constitutionalism, with strong constitutional protections for basic individual and group rights, also comes into clearer focus. In a liberal order, an ideologue who abides by a Paretian constraint in promoting her ideology, since respect for liberal rights stop her from realizing her most highly ranked social states of affairs, namely her political hegemony. She can only pursue laws and policies that satisfy her ideological ranking if she foresees that these laws and policies will not reduce the capacity of other persons to realize their otherwise competing ideologies.[19] For example, freedom of religion allows those with a religious ideology to live out their ideology for themselves, even if it bars them from forcing others to do so. Freedom of speech allows everyone to express their views and attempt to persuade others, but it prevents persons from denying the same freedom to others.

One constitutional restriction on ideological rent seeking are institutions that permit and protect ideological *sorting*. The prime example are federalist arrangements, which Buchanan supported across his career (Feld 2014). Federalist arrangements allow large variations in coercive law and policy between federative units, such that ideologues can relocate to units where the law matches their ideology. In that case, they need not expend resources to engage in ideological rent seeking, and they can avoid being forced to conform to an incompatible ideology.[20]

Buchanan's contracters will likely constitutionalize federalist arrangements to prevent ideological rent seeking, given that they are not in a position to determine whether they can secure ideological hegemony. Exit options allow people who fear they will be in the political minority to avoid the burdens that may be placed upon them. So a federalist liberal order allows persons to engage in ideological forms of life, and so fully realize their ideologies in localities. People who disagree about abortion, gun rights, gay rights, religious freedom, etc. do not have to share extensive political institutions, just the common rules of the federation, which can be quite minimal.[21, 22] Importantly, Buchanan (1995) characterized federalism as an ideal political order, for "too strong a center risks overwhelming a federation by acting opportunistically and extracting too many rents," which I would argue should include ideological rents (De Figueiredo and Weingast 2005, 127).

Liberal legal settlements, then, can be seen as advancing the ideological aims of many groups simultaneously, much as in the models of liberal federalism found

[19] With the exception of ideologies that are anti-Paretian, that is, which primarily seek to destroy an opposing ideology rather than advancing its own values. Here we may worry in particular about ideologies that both publicly praise toleration but refuse to tolerate the intolerant in practice.

[20] Though, indeed, there may be costs to this kind of segregation.

[21] I outline how contemporary social contract theory might make use of federalist arrangements in Vallier (2018).

[22] Another reason for ideologues to value success at a local level is that ideologues typically believe that a trial of their ideology on a small scale will help to vindicate it over alternatives.

in Robert Nozick (1974) and Chandran Kukathas (2007). Liberal legal settlements allow people to protect their capacity to realize their ideologies in their own lives and communities, so long as each person and group are prepared to renounce the right to prevent others from doing the same. The ideologue is bound to be somewhat disappointed by liberal settlements (unless, of course, she is a liberal), but she will see it as an improvement on her ideological ordering in comparison to having her ideology undermined by force of law.

When federalist mechanisms fail, we should appeal to democratic rights, specifically the right to participate in regular elections through voting and public advocacy. Democratic rights do involve impositions, but they at least sometimes allow persons to struggle for ideological victory through persuasion within a political system that settles ideological disputes in ways that all regard as fair and compatible with their values and principles. While some ideologies are set back in federal or national elections (since someone must lose, along with their ideas), the ideology may still be better realized within a democratic regime than an authoritarian regime ruled by people who oppose the ideology. Democracy might be the *best bet* for most ideologues. To put it another way, the expected utility derived from one's ideological ordering may be higher in a democratic regime than under any alternative regime given the likelihood that anti-democratic political power could be used to repress even the partial realization of one's ideology. I'm inclined to think that a democracy constrained by Buchananite constitutional rules would be a great bet, and one with a strong federal structure better still, given the attractions of exit under federalism (Hirschman 1972).

7 Difficulties for Constitutional Containment of Ideological Forces

Before concluding, it is only fair to acknowledge that the introduction of ideological rents and ideological rent-seeking into Buchanan's account of constitutional choice will raise some difficulties. First, one attraction of Buchanan's approach to constitutional choice is that rule endorsement can be consistently interpreted as mutually beneficial, at least in standard well-being terms. But if we introduce ideology, then we can no longer interpret agreement as mutually beneficial. After all, ideologues are often prepared to push for ideological arrangements that make themselves worse off, and that may make others worse off as well. So a constitutional agreement between ideologues and others may be welfare-reducing. In reply, I find it plausible that ideological behavior is often a way that people give their lives meaning, supplying a source of well-being that is, in their judgment, more fulfilling and long-lasting than ordinary personal gains. Playing a role at a constitutional convention may provide a person with more well-being than the entirety of their ordinary life. And we frequently think of those who fight for justice as making their entire lives worthwhile as a result of that fight. Since we can frame ideological behavior as welfare-increasing, we should be able to integrate ideological behavior into the framework of mutual benefit.

Another worry about ideology and mutual exchange is that ideologues tend to be uncompromising types. And so they may resist constitutional bargains with other

citizens lest they have to sacrifice even partial realization of their ideological principles. However, even pure ideologues recognize that their ideologies can be satisfied to varying degrees. A constitutional regime may provide sufficient realization of an ideologue's values that she can go along with constitutional choice at least provisionally. Perhaps she foresees that she can establish more of her ideology within the new constitutional order, and if that doesn't work, she can push for a new constitutional convention. So even strong ideologues can compromise to the extent that they can divide the realization of their ideology into smaller elements and be at least temporarily satisfied that some of these elements are realized, even if all elements are not.

That said, while ideologues might be prepared to compromise in some cases, they may prefer to fight in others. At some margin of dissatisfaction, ideologues will go to war. And, in fact, this is what we often see in ideological revolutions. The revolutionaries would rather die than compromise their principles. This suggests that they may rank having no constitutional arrangement above some constitutional compromises. Here one must simply press the costs of fighting and the unlikelihood of victory. Most ideological revolutions have been disasters, and are often regarded as such by the revolutionaries themselves. Even the temporary establishment of an ideological regime has led to immediate, dramatic loss of life, and the establishment seldom lasts. The arrogance of the ideologue is irrational, and so rejecting constitutional order will often be irrational as well. But I admit, forthrightly, that most people have a hill they're ready to die on, that there are some arrangements that many cannot accept, since there is always some margin of dissatisfaction where even the humblest and pro-social of us must refuse to cooperate. So this means that when constitutional choice takes ideology into account, the set of possible bargains—the size of bargaining space—may shrink. I think there is no way around this.

8 Conclusion

The phenomenon of ideological rent seeking helps us to see political action for what it sometimes is: morally questionable authoritarianism. The ideological rent seeker is not merely trying to make a quick buck—she is prepared to remake society in the image of her own mental model, even if the legal and social changes she proposes are rejected by other people of equal character and intelligence. We can see, then, that ideological rent seeking is not only inefficient in the Paretian sense, but reveals a less savory and more dangerous motive than personal gain. Perhaps it is better to be exploited by the bootlegger than controlled by the Baptist. But even better is a constitution that fights the bootlegger *and* the Baptist. By recognizing ideological rent seeking, Buchanan's theory of constitutional choice can be expressly extended to pursuing this noble task.[23]

[23] I say "expressly" because one might think that Buchanan's conceptual veto will already take opposition to ideological rent seeking into account, even if Buchanan never made this point explicit.

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