

The Impact of Constitutions on Economic Performance

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Constitutions matter for economic performance to the extent that they promote stability, accountability, and credibility. This article considers the nature of political constitutions and their impact on economic efficiency and economic security under three aspects: the basic rights laid down in the constitution, the structure of government, and the stringency of amendment procedures. While emphasizing that constitutions can be useful by serving as precommitment devices, the analysis also emphasizes the dangers of rigidity and the need for flexibility.

The relation between political institutions and economic performance is not well understood. The causal link goes in both directions. Well-designed institutions can improve economic performance, but some institutions may be feasible or effective only at specific levels of economic development. Here I consider only one aspect of the relationship: the impact of institutions on economic performance. However, a full treatment of the subject would consider both aspects, and the following discussion must be read with this important proviso in mind. I further limit myself to the subset of political institutions that are embodied in constitutions.

The study of the impact of constitutions on economic performance is part of what is usually referred to as "constitutional political economy," a field that can be traced back to *The Calculus of Consent*, by Buchanan and Tullock (1962). Buchanan was also the founder of the journal *Constitutional Political Economy*. The public choice approach to constitutions has focused somewhat narrowly on fiscal and monetary "constitutions," although actual constitutions rarely stipulate tax systems or monetary institutions in any detail. The ban on paper money in the U.S. Constitution, for instance, has few analogues in modern constitutions. Moreover, even that document is concerned mostly with other matters, such as the organization of the executive and the legislature, separation of powers, and the relations between the federal government and the states. Constitutional political economy

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must certainly include the study of the economic consequences of noneconomic provisions of the constitution. In fact, because a constitution usually forms a tightly knit whole, even the consequences of economic provisions cannot be identified separately from the political context in which they occur.

To anticipate briefly on the concluding remarks, my claim is that constitutions matter for economic performance to the extent that they promote the values of stability, accountability, and credibility. In more metaphorical language constitutions serve partly as flywheel, partly as feedback mechanism, and partly as precommitment device.

The Structure of Modern Constitutions

The impact of a constitution on economic performance is not simply a matter of the text itself, for three reasons that I shall briefly mention and then largely ignore.

First, constitutions can be written or unwritten. Some countries with a written constitution also have unwritten constitutional conventions. In the United States, for instance, the independence of the central bank (the Federal Reserve Board) is not explicitly stated in the constitution, as it is in some others. Yet the board enjoys considerable *de facto* autonomy because an unwritten convention ensures that the executive and the legislature would incur costly political sanctions if they tried to interfere. Other countries, notably the United Kingdom, rely exclusively on constitutional conventions (Marshall 1984). I emphasize written constitutions, but I shall also occasionally refer to unwritten conventions.

Second, constitutions can be effective or ineffective. The constitutions of the formerly communist countries played no role in regulating political life—except, paradoxically, as constraints on the transition from communism to democracy. In many countries today the constitution is little more than a piece of paper. Because we do not really understand the conditions under which constitutions make a difference, I shall simply stipulate that they do. To be sure, the respect for the constitution may be an effect of the constitution itself,¹ in which case the choice of the proper regime is further complicated. But I ignore this issue.

Third, in countries with a constitutional tradition the real constitution consists of the thousands of court decisions that have spelled out the abstract and general provisions of the original document and adjusted them to changing circumstances and problems that were unforeseen and unforeseeable at the time the constitutions were formulated (Posner 1987, p. 27). The idea of constitutional design is, therefore, somewhat naive. In much of Eastern Europe today, for instance, constitutions are subject to “continuous creation” by very active constitutional courts. The Hungarian court, for example, has taken on the task of imposing coherence on the patchwork constitutional amendments enacted in 1989–90 (Klingsberg 1992). In the following discussion I ignore the problems that arise when the impact of the constitution on economic performance is underdetermined by the document itself.

In trying to define what counts as a written constitution we may distinguish among three criteria. First, many countries have a set of laws collectively referred to as “the constitution.” Second, some laws may be deemed “constitutional” because

they regulate matters that are in some sense more fundamental than others. And third, the constitution may be distinguished from ordinary legislation by more stringent amendment procedures. Applying these characterizations does not always yield the same results. Thus New Zealand has a constitution according to the first and second criteria, but not according to the third. Israel has a constitution according to the second and third criteria, but not the first. Some countries have a body of "organic laws" that, although not part of the document referred to as "the constitution," require more than a simple majority for their amendment. Moreover, some aspects of political life that we tend to think of as fundamental, such as electoral laws, are often omitted from the constitution and are not always subject to more stringent amendment procedures. For the purposes of the present article, the third criterion is the most important, because of the centrality of the idea that constitutions serve as precommitment devices.

Modern constitutions contain three main parts: a bill of rights, a set of provisions regulating the machinery of government, and a set of procedures for amending the constitution itself.

The set of constitutional rights can be classified in many ways. For my purposes the most useful typology is a tripartite division of rights into civil and political, social, and economic. In the category of civil and political rights, I emphasize freedom of speech, freedom of association, and the rights that protect the equality of political participation (say, by prohibiting gerrymandering). In the social category I place a number of rights that are, as it were, intermediate between the right to the pursuit of happiness and the right to happiness itself, namely rights that ensure the provision of goods that tend to promote happiness. These include the right to work and to job security, the right to a fair or adequate income, the right to unemployment and pension benefits, and the right to education and health care. In the economic category are provisions that guarantee freedom of property, exchange, and contract.

The machinery of government consists of the relations of state entities to the citizens and to each another. As noted, electoral laws are not always part of the constitution, and even when they are, details (which can be important) are usually left to statute. Relations among government entities are guided by the separation of powers and the system of checks and balances. The separation of powers is partly a form of functional division of labor, partly a protection against corruption and bribery, and partly a protection against time inconsistency (see below). The system of checks and balances also has a number of aspects. Institutions such as bicameralism and executive veto serve functions quite similar to those of delays and supermajorities in constitutional amendments (see below). Mutual guardianship is embodied in judicial review of legislation and in the power to make or to approve appointments to the judiciary. It is worth noting that no constitution, to my knowledge, contains a provision to ensure the independence of state-owned radio or television from the government. Nor do we find provisions ensuring the independence of the central bureau of statistics. In Norway the Ministry of Finance can and does exercise pressure on economists in the statistics bureau to use models that are more likely to yield the prognosis the government wants to see. In the United States the Bureau of Labor Statistics has sometimes been subjected to even stronger pressures.

Transforming such bureaus into a branch of the central bank and giving the bank greater independence could reduce the risk of such interventions (Bruno 1994).

The substance of *constitutions* lies in rights and in the machinery of government. *Constitutionalism* is usually defined as the idea that the components of constitutions are so basic that they cannot be changed through the ordinary legislative process but require a more stringent procedure. Special amendment procedures include super-majorities, waiting periods (amendments have to be proposed during one parliament and adopted during another), confirmation (they have to be passed by two successive parliaments), referendums, and in federal systems, approval by (some portion of) the states as well as the national parliament. Combinations and tradeoffs among these techniques are also observed.

Conceptions of Economic Performance

Debates in modern political philosophy are to a large extent organized around two polar positions. On the one hand there is the view that societies ought to maximize some aggregate of utility (Harsanyi 1955) or wealth (Posner 1992), in the sense of dynamic optimization rather than static allocative efficiency. On the other hand there is the view (usually associated with John Rawls 1971) that societies ought to assure the highest level of well-being for the worst-off members.² I refer to the first view as efficiency-oriented and to the second as security-oriented. Although one might first think that efficiency can always be used to subsidize security, a moment's reflection suggests that income transfers to ensure security may undermine efficiency—in part because incentive problems cause the transfer bucket to be leaky (Okun 1975) and in part because those who pass the bucket have to be paid out of it.

Neither the purely efficiency-oriented view nor the purely security-oriented view is satisfactory. Intuition, aided by experimental studies (Yaari and Bar-Hillel 1984), suggests that efficiency-oriented theories accord too little importance to the worst-off and security-oriented theories too much. A more adequate theory would somehow take into account both efficiency and security. Laboratory experiments have shown that the overwhelmingly preferred concept of economic justice is to maximize total wealth, subject to the condition that nobody falls below a certain floor-level of income (Frolich and Oppenheimer 1992). This proposal, however, has two disadvantages. From a philosophical point of view it is unsatisfactory because the floor level is not determined by theoretical arguments from first principles (Rawls 1971, pp. 316–17). From the operational point of view that concerns me here, the proposal suffers from the defect that it does not constitute a unique criterion for assessing performance. It does not, for instance, allow us to compare a society that has a higher GNP per capita with a society that has a higher minimum income. One could try to remedy that defect by stipulating a tradeoff between efficiency and security, rather than qualifying the former as a maxim and the latter as a constraint. However, as Rawls points out (1971, p. 34), that idea is just as subjective as the floor-constraint proposal. Like the optimal security level, the optimal tradeoff between efficiency and security is ultimately determined by intuition entirely unsupported by theory.³

In light of these problems, this discussion is divided between assessments of the impact of constitutional provisions on economic efficiency and their impact on security. Certain provisions favorable to one aspect of performance may have a negative impact on the other. Freedom of contract, for instance, can undermine security while enhancing efficiency. Although I cannot, therefore, assess the net effect, it is possible to make unambiguous comparisons among societies regarding their performance on both dimensions. The high-performing Asian economies, for instance, appear to outperform other developing countries in both respects (Campos 1993).

Constitutions and Economic Performance

I have distinguished three major aspects of constitutions pertaining to government, rights, and amendments, and two aspects of economic performance pertaining to efficiency and security. These subdivisions give rise to six different ways in which constitutions affect performance. This division is somewhat artificial since the effects are not separate and additive. For rights to matter there has to be an enforcement mechanism in the machinery of government. Provisions that lay down basic rights and the structure of government matter less if they are easily amended. Conversely, provisions that are difficult to change may not matter much if they regulate only trivial matters like the national flag or anthem. This breakdown therefore has, of necessity, only a rough heuristic value.

Rights and Security

Civil and political rights. Sen (1994; see also Drèze and Sen 1989) has drawn attention to the striking fact that no substantial famine has ever occurred in a country with a democratic form of government and a free press. While fully aware that a free press may not be sufficient to avert catastrophe, he emphasizes the role of the free press in disseminating information about impending disasters and creating an incentive for politicians to alleviate or prevent them. In the United States, for instance, there is no universal health insurance, and the security level is lower than in some developing countries. This fact is well known and well publicized. However, the people who suffer from lack of health insurance are disproportionately unlikely to vote in national elections (U.S. voter turnout is about 50 percent). Politicians who fail to enact health legislation are therefore not necessarily thrown out of office. The culprit here is not lack of political rights but rather the fact that people do not exercise their rights. As many writers have noted (see, for example, Rawls 1971), moreover, rights mean little unless supplemented by a minimum of economic wherewithal. And so the possibility of a vicious circle: for citizens to use their political rights to achieve economic security, they already need to be economically secure.

Social rights. The impact of social rights on economic security might seem more straightforward. If the constitution contains provisions about the right to work, the minimum wage, job security, and the right to free health care and education—provisions that may have been obtained by the exercise of political rights—would

not these provisions ensure economic security? We know today that they cannot, because some of these rights are unenforceable; others, if enforced, are self-defeating; and still others ensure one aspect of economic security at the expense of another. Although the formerly communist countries guaranteed the right to work, for example, full employment was achieved only at the cost of huge inefficiencies, which caused remuneration for work to be substantially less than the unemployment benefits offered in many Western societies. It has also been shown that legislation that compels employers to offer tenure to workers who have been employed continuously for x months also causes them to lay off workers after, say, $x - 6$ months, thus decreasing rather than increasing job security. Similarly, minimum wage legislation, while enhancing security for those who have employment, may also increase the number that are unemployed (see the survey cited in Brown 1988). The overall impact on security then depends on the level of unemployment benefits.⁴

The constitutionalization of the right to free or cheap health care raises still more complex issues. If the costs are funded out of payroll taxes, employers will consider them a cost of labor and employ fewer workers, especially full-time employees. Like the right to a minimum wage, these rights support some aspects of economic security but undermine others. But if health care were funded, like public education, out of general tax revenue, this problem would not arise.

Economic rights. There are a number of ways in which untrammelled economic rights can reduce economic security. Unlimited freedom of contract, for instance, can undermine individual welfare by spawning problems ranging from collective action problems through problems of asymmetric information to weakness of will (Trebilcock 1973). In the constitutional context an important application concerns the free alienability of land. The Bulgarian constitution (Article 21.2), for instance, obligates owners of arable land to cultivate it. Although I know little about the motivation behind this clause or its consequences, it appears intended to prevent owner-cultivators from undermining the national interest in agricultural self-sufficiency.

Rights and Efficiency

Civil and political rights. The impact of civil and political rights on economic efficiency raises a new issue: the relation between democracy and constitutional precommitment. Policymakers may want to precommit themselves to a specific course of action for a number of reasons, making themselves unable to deviate from that course of action without considerable political cost. Take Ulysses, who bound himself to the mast and put wax in the ears of his men in order to resist the temptations of the Sirens (Elster 1984), or former cocaine addicts who write self-incriminating letters to be sent off in case of relapse (Schelling 1992). As these examples suggest, precommitment must represent more than a resolute inner stance—the precommitting agent must act through the external environment.

Consider policymakers in a dictatorship who want to precommit themselves to a fixed, long-term policy environment conducive to sustained economic growth. One example is China in the 1980s, when the economy was liberalized and private own-

ership was allowed to develop. Because economic agents could not know if this state of affairs would last, however, or if they would be allowed to retain their profits, their time horizon was shortened, and many preferred to use their profits for luxury consumption rather than to plow them back into business. While the Chinese leaders may well have wanted to precommit themselves to a hands-off policy, there was no way to do so credibly. Because they had all the power, they were unable to make themselves *unable* to interfere (Elster 1989). The only way a dictatorship could precommit itself would be by making itself vulnerable to the sanctions of international institutions, such as the World Bank or the International Monetary Fund.

By contrast, commitments are of necessity more credible when power is divided among an executive, an independent judiciary, and a democratically elected legislature. This separation of powers is the central theme of North and Weingast's (1989) reconstruction of English political economy in the seventeenth century. After the glorious 1648 revolution, "the credible threat of removal limited the Crown's ability to ignore" (p. 187) Parliament, while at the same time, "the creation of a politically independent judiciary greatly expanded the government's ability to promise to honor its agreements, that is, to bond itself" (p. 819). Finally, "by creating a balance between Parliament and the monarchy—rather than eliminating the latter as occurred after the Civil War—parliamentary interests insured limits on their own tendencies toward arbitrary action" (p. 829).

I suggest that precommitment—to be credible and effective—needs democracy, that is, the possession and exercise of political rights. Although the case of Chile under Pinochet shows that dictatorship and self-limitation are not incompatible (Barros 1993), it is hard to see how an arrangement of that sort could be institutionalized. The promises of an executive are much more credible if there is a well-established procedure for throwing the executive out of office for failing to keep those promises. At the same time executive veto on the legislature may prevent that body from renegeing on its promises. In summary, economic efficiency often requires precommitment, which—to be credible—requires that citizens be endowed with effective political rights.

The recent experience of the high-performing Asian economies points in the same direction. Campos (1993) argues that Asia's authoritarian regimes gained the necessary credibility by allowing the formation of proto-democratic institutions (deliberative councils) to provide channels from business, labor, and academics to the seat of power. In creating these institutions,

the leadership in effect ceded part of its authority over economic policy-making to an independent body consisting of bureaucrats and representatives of the private sector. By doing so, the leaders created confidence among private sector agents that the rug would not be pulled from under them. During the initial stages, this institutional arrangement may not have much credibility. That is, the leadership could just as easily have dissolved the deliberative councils. However, by maintaining the arrangement over time, it becomes more credible. As time passes, the arrangement becomes institutionalized, bearing roots that dig deeper and deeper. Hence, over time, it becomes more and more costly to uproot. (pp. 37–38)

Although this system rests on an unwritten constitutional convention rather than on a formalized constitution, the basic effect is similar. To be effective, power must be divided.

Following Sen (1994), I have argued that civil and political rights can enhance security through the electoral mechanism. Could they also promote efficiency through the same channel? If so, voters would have to care more about efficiency than about security, or security and efficiency would always have to go together. The latter assumption is implausible. The former is certainly not upheld by recent electoral results in Poland and other formerly communist countries. These countries may be atypical, however, because voters are still influenced by the value attached to job security under communism and because current radical reforms have required sharp drops in security levels. Security may therefore loom much larger than efficiency in the eyes of a formerly communist electorate.⁵ Even where concern for efficiency dominates, however, citizens vote retroactively, comparing the state of the economy at the beginning and the end of the electoral period rather than by comparing its current state and the state that would have been obtained if an alternative policy had been followed. But while such a comparison is the relevant one for voters, it is also clearly unfeasible. Politicians get rewarded or penalized for what happens on their watch. They will be reelected in upswings and not in downswings regardless of their actual contribution. This tendency does not completely invalidate the argument, but it would seem to weaken it.

Social rights. It is sometimes assumed that social rights are a form of social consumption that takes place at the expense of social investment and efficiency and that developing countries—including countries in transition to a market system—cannot “afford” generous social provisions. While evaluating this statement is well beyond my competence, some elementary observations are in order.

It is obvious that education and health care represent investments in a productive work force.⁶ Although they often are slow in coming to fruition, a fact that may induce policymakers to prefer consumption or investments in nonhuman capital that have more immediate results, that very delay may provide a reason for constitutionalizing these rights (see below).

On efficiency grounds unemployment benefits also have obvious value. They prevent the destruction or reduction of workers’ productive potential, which would be costly to re-create later. In addition, unemployment benefits contribute to social peace and hence to efficiency. While it is not a proposition easily amenable to empirical demonstration, I believe that these positive effects of unemployment are more important than the negative effect that arises from weakening the incentive to search for jobs.

Economic rights. Economic rights can promote economic efficiency in a number of well-known ways. By ensuring stable property relations, they encourage long-term investment. By allowing freedom of contract and exchange, they encourage Pareto improvements. More subtly, a legal system that underwrites contracts makes promises credible. The right to free entry reduces the likelihood of wasteful monopolistic

behavior. Sometimes, though, rights can affect static and dynamic efficiency in opposite ways. Bhalla (1994) finds, for example, with respect to the right to intellectual property that economic efficiency is enhanced by economic freedom, conceptualized as economic openness and measured by the difference between domestic prices and world prices and by the black market premium on foreign currency.

Some Deviations from Conventional Wisdom

To the extent that there is a conventional wisdom regarding the economic effect of constitutionally guaranteed rights, it can be summarized as follows: (1) Social rights promote economic security. (2) Economic rights promote economic efficiency. (3) Social rights undermine economic efficiency. (4) Economic rights undermine economic security. (5) Civil and political rights are to be valued mainly on noninstrumental grounds. While accepting propositions 2 and 4, I have qualified 1 and 3 in several ways, with the most radical departure from conventional wisdom, however, being my emphasis on the instrumental value of civil and political rights for ensuring both security and efficiency.

Government Structure and Security

To the extent that rights matter for security and the structure of government matters for the enforcement of rights, there is an obvious indirect connection between the machinery of government and economic security. In countries without effective judicial review, for instance, the government can violate security-sustaining rights. More directly, constitutions impose checks on government. At the Federal Convention in Philadelphia in 1787, for instance, it was widely thought that the state constitutions had allowed populist elements to enact security-oriented legislation that favored debtors over creditors. A number of provisions in the U.S. Constitution adopted at the convention therefore had their origin in the framers' desire to contain this tendency. On the assumption that the lower house would have dangerously confiscatory tendencies, they introduced a triple check on legislation.

In countries with a large proportion of poor voters the median voter will, if behaving myopically, favor large transfers that the rich will see as confiscatory. In nineteenth-century debates over the extension of suffrage, both radicals and conservatives predicted that universal suffrage would lead to a heavy favoring of security at the expense of efficiency (Przeworski and Limongi 1993). As it turned out, these fears were largely unfounded. Workers have not behaved myopically and have shown little interest in killing the goose that lays the golden eggs (Przeworski and Wallerstein 1982). In any case, the U.S. Constitution, imposed from above by the property-owning elite, successfully prevented any confiscatory claims from being made. The growth of the welfare state may owe as much to the emergence of a robust labor movement as to the extension of suffrage.

I have argued that constitutionalism needs democracy to be stable and credible. The seventeenth-century English example shows, however, that this democracy need not be extensive. At that time limiting the executive political representation of the

nobility and gentry was sufficient. Thus ensuring efficiency-oriented constitutionalism may be enough; there may be no need to extend suffrage, creating the conditions for security-oriented redistribution. In the high-performing Asian economies, unlike the English case, the counterweight to the executive is not a legislature but a set of informal consulting arrangements that hardened into a constitutional convention. These arrangements, furthermore, have a strong redistributive component by virtue of which they made a direct contribution to security as well as to efficiency.

Government Structure and Efficiency

Recent discussions of constitutional political economy have emphasized the need for a central bank that is independent of the executive (Cukierman 1992; Canzoneri, Grilli, and Masson 1992). The operation of this bank is usually established by statute rather than by the constitution. One might well ask, therefore, whether independence is really possible in parliamentary systems, since the government controls the legislature. For the purposes of this discussion, I assume that independence is assured by a constitutional convention that makes such two-step interventions—changing the law and then using it to interfere—more difficult. (Alesina and Grilli 1992, p. 71, make the same assumption.)

The argument for an independent central bank is the need to prevent the government from engaging in highly inflationary policies. Because of the desire for reelection, for instance, the time horizon of the government might be excessively short. Even a government that tries to maximize the welfare of society rather than its own political fortune will run into the problem of time inconsistency (Kydland and Prescott 1977). If a policy of no inflation is announced and the public believes it, the government has an incentive to deviate from it. Hence there is a need to remove discretionary control over monetary policy from the government.

Assuming that legislators (or constitution-makers) accept this premise, they might opt for rules rather than discretion and write a specific monetary policy directly into the law (or constitution). But a simple rule, while feasible, would provide too little flexibility for adjusting to unforeseen events, while a rule that tried to specify optimal responses to all contingencies would be impossibly complex.

On the other hand policymakers might entrust fiscal discretion to an independent central bank rather than to the government. Countries have adopted various measures to ensure the real independence of the governor of the bank. The Central Bank of Norway, created in 1816, was located in Trondheim, several hundred miles from the capital and from the seat of government. In countries with a dual executive, the central bank governor may be appointed by the president rather than by the government, on the assumption that the governor would then be more likely to be conservative than activist, that is, to place greater weight on price stability than on employment. The constitution may also explicitly forbid the government from instructing the bank or require that it make its instructions public. Furthermore, price stability may be constitutionalized as the goal of the central bank. In the spirit of Schelling (1960), one may also try to strengthen the bank by taking away some

of its powers. To protect the bank from informal pressure from the government, therefore, the bank could be explicitly forbidden from engaging in deficit funding.

While the impact of central bank arrangements on economic efficiency is relatively amenable to analysis, other implications of the separation of powers remain highly conjectural. Economic analysis of bicameralism (Levmore 1992) and of the separation of powers more generally (Silver 1977) have yielded few robust conclusions because the impact on efficiency of any given part of the government machinery cannot be assessed separately, and the assessment of all parts simultaneously is impossibly complex. The effect of choosing presidentialism over parliamentarism, for instance, is heavily influenced by the mode and timing of elections, the mutual veto powers of parliament and president, the role of judicial review as a check on both, the exact allocation of powers between the president and the government, the independence of government from parliament (by devices such as the constructive vote of no confidence), and so on. While one might regress economic growth on these variables to determine their relative importance, this approach would not capture important interdependencies and would suffer from selection bias (Przeworski and Limongi 1993). If we observe that among democratic regimes those with feature X do worse than those without it, for instance, the reason might be either that X is an obstacle to growth or that it undermines democracy.

Constitutionalism and Security

The general role of constitutionalism is to make it more difficult to change constitutional provisions, whether these are valued for their impact on security or on efficiency, or for other reasons. Two main types of hurdles may be imposed on constitutional amendments: supermajorities and delays (waiting periods and confirmation procedures). Supermajorities are required to ensure the stability and predictability of the political system and to protect the rights of minorities. Delays are required to protect the electorate against itself, that is, to reduce the likelihood that a majority will act under the sway of a momentary passion or short-term interest. "Constitutions are chains with which men bind themselves in their sane moments that they may not die by a suicidal hand in the day of their frenzy" (Stockton as cited in Finn 1991, p. 5). Supermajorities can also, of course, perform this function, the limiting case being provisions that are exempt from amendment.

Supermajorities and delays may also differ in mode of adoption. At the founding moment there may well be a consensus on the need for a stable and predictable political system. Suppose that other things being equal group A prefers system X and group B prefers system Y. Nevertheless group A may prefer system Y with stringent amendment procedures over X with less stringent procedures, because the long-term benefits of stability are greater than the immediate benefits from any particular arrangement. Whatever the outcome of the constitutional bargaining (Heckathorn and Maser 1987; Elster 1993), there is a common interest in entrenching it. Similarly, the founders may agree on the need for precommitment to protect themselves (and later generations) against momentary passions and short-term interests.

A very different problem arises, however, when a majority is supposed to pre-commit itself against acting on a standing passion, such as ethnic or religious fanaticism or deeply held egalitarian beliefs. One may agree that "constitutional provisions should be designed to work against precisely those aspects of a country's culture and tradition that are likely to produce harm through that country's political processes" (Sunstein 1991, p. 385). Yet those provisions are also the least likely to be adopted, precisely because culture and tradition work against them. As Przeworski and Limongi (1993) observed, "advocates of commitment...do not consider the political process by which such commitments are established" (p. 66). And Guntz (1991) notes that one cannot "rely on perfect institutions to rescue imperfect persons" (p. 285). Posner (1987, p. 10) makes a similar point. If the majority among the founders feel passionately about a given topic, it is unrealistic to expect them to pull their punches. An example is provided by the stringent anticlerical clauses of the 1931 Spanish constitution (Bonime-Blanc 1987, pp. 102-3).

There are some ways to get around this difficulty. If the constitution is imposed from the outside—as with the 1946 Japanese constitution (Inoue 1991) or to a lesser extent with the German constitution of 1949 (Merkl 1963)—the external agents may indeed be able to protect the framers against their standing passions. If the constitution is the work of a privileged minority—as at the U.S. Federal Convention of 1787—this minority can use the constitution to protect itself against the future enfranchisement of the majority. In most modern instances of constitution-making, however, the assembly that adopts the constitution is free of external constraints and is representative of the nation as a whole. The body that binds is no other and no wiser than the body that is to be bound. Although one may still try to determine, in the abstract, which constitutional provisions are optimal, there is little reason to think that any specific country would be motivated to adopt them.

It might appear to follow that if constitutional provisions enhance economic security, they will do so better the more difficult it is to amend them. If the rights to freedom of speech, for instance, could be abolished by simple majority, the benefits of that principle would be more fragile than if this right were immune to amendment. However, there are cases—notably in wartime and other extreme emergencies—when freedom of speech and other security-enhancing rights have to yield to more important considerations of security.

A common dictum among constitutional writers then applies: the constitution is not a suicide pact. Should Ulysses bind himself to the mast with no possibility of unbinding himself if he knew that the waters around the island of the Sirens might be so difficult that only he could navigate them? The problem arises not only for security-oriented provisions but also for efficiency-oriented ones.

Is it possible to make it easier to unbind constitutional ties in an emergency without at the same time making it possible to yield to temptation—precisely the case for which self-binding was designed? One might design a tradeoff between delays and supermajorities, as in the constitutions of Bulgaria, Finland, and (with regard to foreign treaties) Norway. When there is an urgent need to do so, it will presumably be possible for these countries to gather a large enough majority to amend the constitution. When a smaller majority is involved, indicating that there is no

emergency, delays can be imposed to allow decisionmakers time to cool down. Many constitutions, furthermore, contain provisions for emergency powers and allow the government to suspend (rather than amend) other provisions. As the history of the Weimar Republic shows, however, this solution may generate problems of its own, for the fine-tuning of constitutional powers is particularly difficult in an emergency.

To ensure security, as Sen argues (1982), constitutions must guarantee the exercise of two different rights: free speech to publicize abuses, and political rights to enable people to vote the abusers out of office. If, however, the governing majority in parliament is free to manipulate the mode of election (by instituting proportional voting rather than majority voting in single-member districts), the timing of an election, and the division of the population into electoral districts, it may also be able to deflect the power of popular discontent. By constitutionalizing the electoral process, this particular escape hatch may be blocked. The point is not that there is any particular electoral arrangement that is better suited for expressing "the popular will." In fact, the impossibility theorems of social choice theory suggest that there may not be any such thing as the popular will.⁷ Rather, the point is that rigid adherence to one system makes it more likely on the average that officeholders will be voted out of office if they commit abuses.

Constitutionalism and Efficiency

Constitutionalism can enhance economic efficiency by solving the problem of time inconsistency. It has been argued by many writers that individuals tend to discount the future by a nonexponential function that causes them to deviate from their plans (Strotz 1956; Ainslie 1992; Laibson 1993). This is a purely individual phenomenon observable, for instance, in Robinson Crusoe's behavior before the arrival of Friday. There is also the phenomenon, alluded to earlier, that an announced policy is time inconsistent if the policymaker has an incentive to deviate from it because economic agents believe in it. This phenomenon depends on strategic interaction between policymaker and agents and can arise even if there is no discounting of the future.

Both phenomena can influence behavior adversely. Nonexponential discounting is closely related to the phenomenon of weakness of will (Elster 1985), as captured in St. Augustine's prayer: "Give me chastity and continence, only not yet." It may induce me, for instance, to make a dental appointment for February 15 and then to cancel it on February 14, for no other reason than that it is getting closer in time. In strategic interaction, suboptimal behavior may be induced if an announced optimal plan lacks credibility. In both cases precommitment has been advocated as a way to preclude suboptimal behavior. Elster (1984) and Schelling (1985) survey a wide variety of precommitment devices used in individual cases. For the central bank, strategic precommitment to a rigid monetary policy may solve the problem of time inconsistency. More generally, precommitment may be needed to ensure the credibility of rules.

A government, viewed as an individual writ large, may well be subject to this Strotz-like inconsistency when it chooses investment projects with low but immediate yields over projects with higher but delayed yields. Such a government might

fully recognize the value of investments in education and health care yet decide to postpone them time after time as the selected date arrives. Constitutionalizing the rights to education and health care, and perhaps entrenching them as unamendable rights, is a way to get around this problem.

Constitutionalizing monetary policy is one precommitment solution to the problem of strategic time inconsistency. More generally, a constitutional commitment to property rights is needed for optimality. In patent policy, for instance, "given that resources have been allocated to inventive activity which resulted in a new product or process, the efficient policy is not to permit patent production" (Kydlund and Prescott 1977, p. 477). But such constitutional commitments work only when embedded in a system of checks and balances. A dictator may well announce a constitution with strong and unamendable guarantees for property, but nobody will believe him if there is no mechanism outside his control that can be counted on to sanction violations.

One might ask, however, whether such precommitment might not be a remedy more dangerous than the disease. According to Madison's notes from the Federal Convention in Philadelphia, for instance, George Mason observed that "though he had a mortal hatred to paper money, yet as he could not foresee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed" (Farrand 1966, vol. I, p. 309). Similarly, when in 1946 the Italian Parliament considered constitutionalizing monetary stability, one objection to that proposal also referred to the need for the government to be free to act in times of war (Spinelli and Masciandora 1993).

The appeal to explicit emergency powers is probably sufficient to prevent the suicide pact from being carried out in wartime. One may imagine, however, sudden shocks to the economy that are not national emergencies in this sense and yet are large enough that rigid adherence to a monetary rule could have a disastrous impact on employment.⁸ Society may then be better off by having monetary policy permanently entrusted to the discretion of a central bank governor who—although concerned mainly with price stability—also allows employment some weight (Rogoff 1985). The constitution might constrain the central bank's discretion by emphasizing the goal of price stability, but not to the point of making the bank's governor the mere executor of a preset policy. Again there is a risk that the governor might have unexpectedly rigid principles or be more concerned with his reputation among other central bankers than with the welfare of society. One remedy against this danger might be a constitutional provision allowing a supermajority in the legislature to depose the governor.

Przeworski and Limongi (1993) object to precommitment in general and antidiscretionary precommitment in particular, claiming that "the same forces that push the state to suboptimal discretionary interventions also push the state to a suboptimal commitment" (p. 66). But that cannot be right. Even when policymakers are concerned exclusively with the welfare of society, a state may be "pushed" to suboptimal discretionary interventions. To be sure, such discretionary interventions as subsidies to ailing industries are often the outcome of political pressure. Kydlund and Prescott (1977) argue, however, that the lack of a technology for making a credible binding

commitment may be sufficient to produce a suboptimal outcome without the addition of political pressure.

Conceived of as a requirement for a supermajority, constitutionalism can promote economic efficiency. For if all laws can be changed by simple majority, lack of stability and predictability will cripple economic activities. Only when economic agents are reasonably confident that expropriation will be undertaken only with full compensation will they engage in activities that enhance the value of their property. Simple majority voting, moreover, has the potential to generate cycling social preferences with all sorts of concomitant social costs. If Caplin and Nalebuff (1988) are right, a 64 percent majority rule can eliminate these costs. Simple majority voting also tends to encourage rent-seeking. "If the vote of a simple majority could change the basic form of government or expropriate the wealth of a minority, enormous resources might be devoted to seeking and resisting such legislation" (Posner 1987, p. 9). Note that this statement suggests or presupposes that there is a systematic and substantial difference in rent-seeking potential between constitutional matters and matters that are subject to ordinary legislation—a claim that to my knowledge has not been tested.

Conclusion

I have discussed a sixfold classification of causal connections between constitutions and economic performance. In concluding, I cover the same ground from a slightly different perspective, by looking at the mechanisms that mediate between the institutional and the economic variables.

- *Accountability.* The constitution must ensure that politicians are held responsible for their actions and that there is a mechanism for voting them out of office. Accountability affects both economic efficiency and security. If the executive is not subject to sanctions, it cannot make credible promises. Also, threats to basic security may not be deflected if those responsible cannot be held accountable.
- *Stability.* The constitution must provide a framework that is relatively stable and immune to strategic manipulation. The provision of basic rights should not be at the mercy of changing majorities. By ensuring stability of the basic framework, the constitution discourages wasteful rent-seeking. Also, stability and nonmanipulability of the political system are needed in order to underwrite accountability.
- *Predictability.* The constitution should facilitate and encourage long-term planning by citizens by protecting them against retroactive legislation and taxation and against expropriation without full compensation. Stability is a necessary but insufficient condition for predictability. The Danish constitution, for instance, is well entrenched but, unlike the Norwegian constitution, has no ban on retroactive legislation—thus, the different procedures for war crime trials in the two countries after World War II.
- *Protection against time inconsistency.* As a form of precommitment, the constitution can solve problems of time inconsistency, both of the individual (Strotz) type and strategic (Kydland-Prescott) type. This function of the

constitution, however, supposes that the precommitting agent is accountable to some other agent or institution.

- *Protection against short-term passions.* The precommitment aspect of the constitution is also evident in the use of delay procedures that allow for cooling down before important changes are made. This can be achieved by building delays into the amendment process. Bicameralism, too, slows the legislative process and thereby reduces the risk of making decisions in the heat of the moment.
- *“Suicide” prevention.* Constitutional precommitment can prevent economic suicide but, if taken literally, can also serve as a suicide pact. A very rigid constitution can occasionally undermine both security and efficiency despite overall good effects. One escape hatch is to constitutionalize exceptions through carefully designed provisions of emergency power. Another is to relax the constitutional rule and to allow room for discretion by an agent insulated from pressure by the executive or the legislature. Finally, stringently constrained appointment or dismissal powers can be instituted to prevent ultraconservative or ultraradical supreme court justices and central bank governors from promoting their ideological views at the expense of society.

Notes

1. Thus de Tocqueville (1990) notes: “I have long thought that, instead of trying to make our forms of government eternal, we should pay attention to making methodical change an easy matter. All things considered, I find that less dangerous than the opposite alternative. I thought one should treat the French people like those lunatics whom one is careful not to bind lest they become infuriated by the constraint” (p. 181).

2. For the present purposes, the distinction between well-being, Rawls’s “primary goods,” and Sen’s “capabilities” (Sen 1982) can safely be ignored. For other purposes, however, it is essential (Cohen 1989). Similarly, the distinction between wealth-maximization and utility-maximization, although crucial for philosophical purposes, is not pertinent here, although utilitarians will admit larger amounts of redistribution than Posnerian wealth-maximizers. Even when redistribution to the poor causes a reduction in aggregate wealth by lowering incentives for profit and increasing the costs of administration, it may nevertheless cause an increase in aggregate utility because of the decreasing marginal utility of money.

3. A brief note on the place of intuition in political philosophy. A theory of distributive justice is to some extent constrained by our intuition about how goods ought to be allocated in particular cases. To reduce the welfare of a large majority by a large amount in order to increase the welfare of the worst-off by a small amount is intuitively felt to be unacceptable. Conversely, a utilitarian prescription to impose large suffering on the few in order to generate a small benefit for the many also runs counter to intuition. But intuition cannot substitute for theory tested against concrete cases.

4. I skirt the problem that security, or level of well-being, is a function of several variables that need not vary together: income, work, health, even education. I am as little able to determine the proper tradeoff among these aspects of security as I am to specify the proper tradeoff between efficiency and overall security.

5. That conclusion, however, does not mean that governments will follow the security-oriented mandate they receive from the electorate. Susan Stokes and Adam Przeworski have drawn my attention (personal communications) to the surprising frequency with which politicians who are elected on a security-oriented platform go on in office to adopt the efficiency-oriented measures that were proposed by their defeated opponents, as illustrated by recent elections in Poland and Hungary.

6. If education and health care were seen exclusively in this perspective, these goods would not be provided as they are in Western societies today. More emphasis would be given to treatment of current and future members of the work force. Smoking might be encouraged rather than discouraged (by dying early, smokers save society a great deal of money). Funding of the humanities and (probably also) the social

sciences would suffer. Whereas existing systems of health care provision can be explained by a combination of security and efficiency considerations, existing systems of education can be explained by a combination of consumption and investment considerations.

7. In this context one should mention an intriguing finding by Caplin and Nalebuff (1988): by imposing relatively weak restrictions on the admissible combinations of individual preferences, they show that a 64 percent majority rule ensures that cyclical preferences will never arise. Although the result eliminates the problem of cycling preferences, it immediately introduces that of incomplete preferences. (I owe this observation to Aanund Hylland.) In the constitutional context, with a well-defined status quo, the problem of incomplete preferences may not be dramatic. But in ordinary legislation, such as the vote on the annual budget, it would be very serious.

8. Posner (1987) points to another tradeoff between stability and flexibility in constitutional design. Parliamentary systems may "be expected to exhibit faster and wider swings of public policy than would [a system of separation of powers], and with destabilizing effects." But, "to the extent that a parliamentary system enables government to turn on a dime, this has its upside (corresponding to our system's downside), illustrated by the swift replacement of Chamberlain by Churchill in 1940 as compared with our inability to replace promptly such *fainéants* as Buchanan, Andrew Johnson, Wilson, Hoover, and Nixon" (p. 30).

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