

Chapter 9: Other Reforms of Parliament and Their Effects

Chapters 2–4 provide a rationale for institutional conservatism, rule of law, the types of services that territorial governments tend to provide, and the “king and council” template for governance. Chapters 5–6 demonstrate that constitutional exchange provides a possible explanation for policymaking authority shifts from kings to their parliaments. Changes associated with economies of scale and ideological shifts can produce sufficient support among policymakers for adoption of constitutional amendments. Chapters 7–8 note that suffrage law tends to be less directly affected by economic development and more likely to shift when widely held theories of governance and voter competence are revised through time. Together these chapters provide a possible explanation for the gradual emergence of parliamentary democracy from autocratic governments. Peaceful, lawful transitions to parliamentary democracies are possible because opportunities for constitutional exchange can emerge within divided governments.

The reforms focused on in the previous four chapters are important ones, but a wide variety of other reforms are also possible. There are a nearly infinite number of details that define the procedures and constraints for adopting public policies, and those details can be changed one or two at a time. And, as in ordinary economic markets, the more dimensions in which institutional bargains can potentially be struck, the more likely it is that constitutional exchange takes place. Potential gains from trade are, however, constrained by institutional conservatism and preexisting political institutions in a number of ways, because new laws require agreements among parliamentary coalitions and between king and parliament sufficient to transform ideas for reform into standing public policies.

This chapter explores other major areas of parliamentary and electoral reform that played important roles in constitutional debates during the nineteenth century.⁸³ A wide variety of procedural questions had to be addressed by those who negotiated the transition to Western democracy. Who and what should elected representatives represent? How should votes be assigned and counted to select representatives? What are proper procedures for constitutional reform? These questions were not always answered once and forever during the nineteenth century, but were revisited and revised from time to time as the interests of the parties represented in government changed. We accept many of these eighteenth and nineteenth century constitutional decisions as “self evident” in the twenty-first century, although they were not at the time they were finally settled.

A. Alternative Bases for Parliamentary Representation

Historically, most multicameral parliaments were designed to represent the interests of different occupations and classes. Aristocrats might be represented in one chamber, the church elite in another, and wealthy commoners in another. In bicameral systems, relatively wealthy persons might be represented in one chamber and less wealthy (middle-class) interests represented in the other. Or, alternatively, one chamber might be directly elected and the other might be indirectly elected by regional governments. That the chambers of parliament were often selected on the basis of class and occupation is sometimes explicitly recognized in the names of the chambers, for example, in the British parliament with its House of Lords and House of Commons and the old Swedish parliament with its four-chamber parliament representing nobles, clerics, townsman, and farmers.

Late medieval parliaments were not democratic in the modern sense, because their members were generally appointed or elected on the basis of very narrow suffrage, rather

⁸³ For the most part, the focus of this chapter is on majoritarian procedures for selecting public policies and holding elections. A variety of other voting rules can be potentially used, although such alternatives attracted relatively little attention in the nineteenth century. See Buchanan and Tullock (1962) for an early discussion of the merits of super majority rule. Mueller (2003) and Tideman (2006) survey the rational choice literature on the properties of a wide range of alternative voting rules, including a variety of rules for determining electoral outcomes under proportional representation, which were much discussed when determining specific formulae for membership in parliament.

than selected by a broad electorate. Nonetheless, the various chambers of government were representative bodies that allowed various classes, occupations, and regions to have a direct voice in the formation of some policies. The extent of that influence varied with the formal and informal authorities of the parliament in question.

Varying the number of chambers, number of seats, and qualifications for seats in those chambers allows one to include or exclude particular interests from formal representation. For example, chambers representing the interests of commoners were often added to ones representing nobles and high clergy in the thirteenth and fourteenth centuries. During the eighteenth and nineteenth centuries, most three- and four-chamber parliaments were replaced with bicameral ones through constitutional reforms. In the nineteenth century, many parliaments limited their membership by both wealth, bloodline, and occupation. In mid-nineteenth century Prussia seats in the elected chamber of parliament were determined by the wealth of their voters, with one third of the seats going to the wealthiest third of the electorate, another third going to the second wealthiest third of the electorate, and so forth. For much of their histories, the persons who could sit in parliament were also limited by wealth as well as bloodline and occupation. In many cases, only very wealthy persons were allowed to run for seats in parliament, and salaries were rarely paid to those who won the right to occupy the seats.

The architecture of parliament and the qualifications for office are clearly matters that can be bargained over, and agreements for significant reforms will occasionally be possible, as was often the case in nineteenth century Europe. Other minor procedural reforms will be adopted more frequently, but most of these will pass unnoticed by outsiders who are largely unfamiliar with the details of procedures within parliament.

B. Alternative Characterizations of Voters and Votes: the Fancy Franchise

Given a general architecture for parliament, it is clear that a variety of methods for selecting representatives exist. Members may be appointed by the king for a finite term of office, for life, or with rights of inheritance. Alternatively, members of parliament may be

directly or indirectly selected by persons who are not members of government, but whose interests are to be represented. A common method of selection in such cases was by counting votes, although other methods are also possible. For example, town representatives might be selected by their mayors or town councils; clerical representatives might be selected by the church's leadership (who may well appoint themselves). In cases in which elections are used, suffrage may be narrow or broad, as noted in the past two chapters.

Even after a parliamentary architecture is chosen, a policy of selecting representatives by voting is adopted, and rules determining who is eligible to vote are put in place, other questions still needed to be addressed. Although most residents of contemporary democracies completely accept the idea that every adult should cast exactly one vote in elections, this is not the only possible voting procedure. For example, if wealth or payment of taxes determines suffrage, it logically follows that persons who own property in more than one voting district should be able to cast votes wherever they own property. Similarly, it can be argued that a person that owns more property a particular government's jurisdiction is more affected by its local and national tax decisions and often more affected by public service decisions (enforcement of property rights, roads, etc.). If so, perhaps wealthy persons should be given greater weight in the selection process for high government offices. In addition, it could be argued that education or worldly experience is a useful criteria for suffrage, because the judgment of such persons, particularly on distant or abstract matters, would be more informed than those of illiterate or parochial persons. Perhaps their votes, too, should be given greater weight. Such suffrage rules affect the relative influence of persons eligible to vote, and the identity of the pivotal voter, by effectively granting some persons more votes than others.

Nineteenth-century debates about suffrage included consideration of a number of proposals for the "fancy franchise," and in a few cases formal weighted-voting systems were adopted. For example, weighted voting schemes were adopted in the nineteenth

century by Sweden and Belgium as parts of bargains struck for parliamentary and suffrage reform.

The persons entitled to vote and the number of votes given to particular groups of voters tend to affect public policies by changing the pivotal voter, and these effects will influence negotiations on suffrage law in much the same way that wealth did in the models of chapters 7 and 8. Models of electoral competition suggest that any change in the franchise that affects the identity of “the” pivotal voter also affect median preferences on public policy and thereby the platforms of successful political parties. The positive theory of elections together with demographics, thus, provide us with reasons to believe that both the weight and scope of the franchise will have direct effects on the makeup of government and the policies that it adopts.

Linking suffrage or eligibility for seats in parliament to personal wealth also have effects on policies because a rough correspondence exists between income, occupation, and policy interests. The wealthiest persons in Europe in the early nineteenth century were nobles with large landholdings and the most successful businessmen and farmers, many of whom were nobles or from noble families as well. The next wealthiest group consisted of similar persons with smaller landholdings and businesses, followed by successful professions (doctors, lawyers, and bureaucrats) and so forth, on to peasants and laborers with little wealth or income, and to those entirely lacking income and wealth. Such groups may be expected to differ significantly in their assessment of public policies such as those defining the proper characterization of duties between landlords and tenants, the ideal tariff level, and the combination of public services provided.⁸⁴

By gradually reducing property requirements for the right to vote, and adopting the secret ballot, nineteenth-century suffrage reforms caused the electorate to become both much larger and on average much less wealthy than it had been for centuries. It also made the median (and mean) of the new distribution of voters less and less likely to be a significant land owner and more and more likely to be an employee than an employer. Such voters would naturally prefer somewhat different laws for determining relationships between guilds and their customers, between landowners and tenants, between employers and employees, and for determining the proper level of various government services such as public education and social insurance. They are likely beneficiaries of such legal reforms and face a relatively low “price” for many government services insofar as the tax base consisted largely of property and tariffs. The historical evidence supports these conclusion, because as the franchise expanded beyond medieval rules, liberal parties representing *more or less* middle-class interests became increasingly important, followed by social democratic and labor parties that promised reforms of interest to working class persons.⁸⁵

The last great extension of suffrage in the period focused on by this book added women to the pool of voters. If men and women have, on average, somewhat different assessments of the proper role of the state or different interests that can be advanced through public policy, women’s suffrage will also affect public policy. Lott and Kenny (1999) provide statistical evidence that women in the United States generally prefer greater government services than men for a variety of reasons. They find evidence, for example, that the enfranchisement of women tended to increase the scope of government social insurance programs. Such effects are not always found in statistical studies of government

⁸⁴ An example of the policy consequences of a limited franchise can be found in Wicksell’s analysis (1896) of the effects of government policies on the working class, who were at that time ineligible to vote in Sweden. His analysis suggests that the taxes paid by the working class, whose interests were not directly represented in the legislature, generally exceeded the value of services received from government (see Wagner 1988: 159).

⁸⁵ Contemporary statistical evidence of a link between participation in elections and the size of government is developed by Mueller and Stratmann (2000). Using international data, they find that the larger the fraction of the population that votes, the larger government spending tends to be as a fraction of GDP. Meltzer and Richard (1981) imply that an increase in the number of voters with below-average income, who tend to benefit from general redistribution programs, tends to increase the level of redistribution (by changing the median voter), whereas an increase in the number of persons with above-average income tends to decrease the level of redistribution.

expenditures (see, for example, Aidt et. al. 2006), because differences in the policy preferences of women and men are not as great as differences among the aristocracy, middle class, and peasants, but are consistent with electoral theory for countries in which women have significantly different interests from men.

Suffrage rules also affect the manner in which political contests are organized by those wishing to be elected to government office, because suffrage law determines the number of persons who must be pleased in order to secure a seat in parliament. In an old English rotten borough, such as Sarum, the support of just a few persons was sufficient to win a seat in parliament. In a large urban district, the support of several thousand voters might be necessary.⁸⁶ As electoral contests became more competitive and the number of votes required for seats in parliament increased, economies of scale in campaigning became clear, which allowed new formal organizations to be developed in support of candidates to high office and induced reforms of older informal organizations representing candidate interests. The informational advantages of “brand names” and political ones associated with block voting in parliaments became increasingly important as suffrage expanded and as parliamentary influence over policy increased. Candidates for elective offices with broadly shared policy interests, consequently, formed various new informal and formal organizations, which came to be called “political parties,” and which gradually came to play a more central role in electoral contests.⁸⁷

C. Apportioning Representatives among Electoral Districts

Beyond variations in suffrage and voting weights are rules that affect how votes are used to select representatives. A wide range of methods exist for translating both weighted

and unweighted votes into representation. Elections can also be organized in a number of ways. For example, one can have a single national election or divide the polity up into a number of districts. The election rules can be uniform throughout the polity or may vary by district. The districts may be *more or less* permanent in size (as tends to be true of federal districts: states, provinces, *länder*, and so on) or may be periodically adjusted in response to changing political demands or population shifts. Note that district “size” can be measured by area, population, or a combination of the two. Laws may constrain districts to *more or less* equal size or not. In addition, there is the issue of whether one must be a citizen to vote and what the proper definition of citizen should be.

Districts may select individual representatives (single-member districts), or districts may select several members simultaneously (multiple-member districts). In the latter case, voters may be able to vote for several representatives simultaneously or be able to cast only a single vote per representative office. Representatives may be selected through winner-take-all contests (plurality rule) or be divided *more or less* proportionately to the votes received by different subgroups of candidates, as in proportional representation systems.

Changes in parliamentary architecture and the allocation of voters to districts can both affect the policy outcomes under a given suffrage qualification rule. For example, a bicameral system that gives equal agenda setting and veto power to noble and commoner chambers increases the nobility’s influence on policy relative to that in a unicameral system, in which representatives are elected through one-man, one-vote institutions.

In some cases, changes in one subset of institutional details can be used to reduce the effect of other reforms, such as changes in suffrage rules. For example, Prussia adopted

⁸⁶ Electoral districts were often left in place for centuries at a time and representation in parliament did not shift as people did. Seats in those early days of parliaments were initially assigned to districts to secure political advantage for the persons that could select the districts to have representation (often the King). As a consequence, areas of England that depopulated through time often retained their right to select members of parliament, even though the number of persons qualified to vote became increasingly small. For example, during the middle ages, Old Sarum had been a significant center of religious education and the site of a Bishopry, was entitled to select two members of parliament. By the nineteenth century, however, Old Sarum had largely been abandoned and as few as seven land owners (burgage holders) were entitled to select its two representatives to parliament (McKinley 1905: 13).

⁸⁷ See, for example, Aldrich (1995) for a discussion of the emergence and role of parties in the United States or Hill (1996) for an overview of the emergence and evolution of political parties in England.

universal male suffrage in 1850, but representation in the new parliament was based on wealth, rather than population, which overweighted the interests of the wealthy relative to the norm of one-man, one-vote in order to satisfy suffrage movements while preserving much of the authority of hereditary aristocrats. Similarly, in Sweden, the combination of wealth-weighted voting and the use of wealth to characterize the electorate of the first chamber of the Riksdag during the late nineteenth century assured that members of the first chamber would be from the economic elite of Sweden, even though they were elected on the basis of fairly broad suffrage.

In other cases, such changes can be used to promote political liberalization in lieu of suffrage reform. In 1800 Great Britain had a number of districts in which a handful of voters could select a member of the House of Commons and many other districts in which a much larger number of voters also selected a single member. The election reform of 1832 changed the assignment of representatives to districts, more than it altered qualifications for suffrage itself. Most rotten boroughs were eliminated, and new urban centers received additional representatives for the House of Commons.

D. Distinguishing among Democracies

For the purposes of this book, it is important to note that there is no magic moment at which a polity can be said to have become a “democracy,” although it is often possible to say whether a government has become more or less democratic, as when suffrage expands and the authority of parliament increases. It is also important to note that democracies are not all created equally. Different configurations of parliament and different electoral systems have significant effects on the manner in which public policies

are adopted, as predicted by more finely grained models of democratic decisionmaking, and these predictions are broadly supported in contemporary empirical research (Congleton and Swedenborg 2006). These differences will also influence constitutional negotiations as final steps to Western democracy are negotiated and agreed to by members of parliament.

For example, the constitutional (or quasi-constitutional) decisions to adopt proportional representation or single-member districts have a variety of effects on the composition of parliament and on the public policies adopted. In cases in which single persons are elected from particular geographical regions, the candidates—whether party members or not—have strong incentives to adopt positions that advance the interests of the median voter of their district. In cases in which the average or median voter in districts are more or less the same, only a single point of view will be represented in parliament; however, if several members are elected from somewhat larger districts through proportional representation, a broader range of political opinions will tend to be found in parliament, because minority parties will also gain seats in parliament.⁸⁸ Proportional representation (PR) systems, thus, allow direct representation of persons of more extreme views in parties that are substantially to right or left of the more central parties.

Because voters vote for political parties rather than persons, PR also causes political parties to become an essential feature of politics, particularly in PR systems that include vote thresholds for seats in parliament. Under first-past-the-post systems, it is possible for persons who are not affiliated with a political party to win an election on their own merits by running as an independent, rather than a member of a party. Such candidates merely have to receive a majority of the votes in the districts of interest. In PR systems with a

⁸⁸ The matters voted on vary as well. Under direct democracy, voters vote directly on policy matters as with a referendum. Under representative democracies, voters elect representatives, who in turn make policy. Within representative systems, voters may vote directly for persons to represent them, as in first-past-the-post, single-member district elections, or they may vote for parties or electors who in turn decide which persons will occupy the parliament. Proportional representation systems imply that voters cast votes for parties, rather than individual candidates or policies, because it is party representation that is allocated by proportional representation voting procedures.

minimal threshold a candidate needs to achieve only a small fraction of the votes to win a seat. An independent candidate for office in a PR electoral system with a significant threshold, however, must create a “party” and that party has to secure a much larger number of votes nationally (or regionally) to be elected.⁸⁹

Those elected to parliament under PR systems are partly determined by each party’s leadership as well those voting for the party, because the leadership determines the persons who will be on the party lists and in what order. This allows party leaders to discipline elected officials who fail to vote the party line by simply moving “disloyal” representatives further down the party list, which indirectly provides party leaders with significant policymaking authority within their party. This is not to say that party leaders in first-past-the-post systems are without power, but the party lists give political leaders in a PR system an additional tool not available under first-past-the-post systems. The list effects imply that a shift from the first-past-the-post to proportional method of electing representatives tends to increase the importance of both political leaders and political parties.

For example, Swedish political history provides evidence of the importance of party lists as a device for increasing party discipline. Before the 1907-09 reforms, political parties in Sweden existed as loose confederations of representatives. Party membership was such a hazy description before those reforms that lists of members of the Riksdag before 1905 often do not classify members by party; and those that do often differ with respect to the extent of “membership” in the various “parties.” After the adoption of the PR system, it became necessary for candidates to formally declare themselves members of a party to secure office. Subsequent lists of members nearly always list the party affiliations of members and usually agree on party membership. Party discipline also became more evident in the pattern of voting in the Riksdag.⁹⁰

The number of political parties that can be sustained is also affected by the choice between PR’s multiple member districts and the single-member district systems of first-past-the-post electoral systems. First-past-the-post democracies tend to have just two dominant political parties. One explanation for this is Durverger’s theorem (1954), which suggests that under a plurality voting rule, a center-right and center-left party can effectively block new third parties from winning elections. Because political parties have

⁸⁹ Under a PR system, voters vote for parties, and the number of seats that each party gets to fill is determined by its vote share. A party that gets 40% of the votes gets 40% of the seats in parliament. If there are 100 seats in parliament, the party gets 40 seats. The party fills these seats by taking the first 40 persons on its candidate list. If the party had gotten only 20% of the votes, only the first 20 persons on the list would have a seat in parliament. This means that the first votes received by each party, and the order of candidates on the party lists determine the individuals who become members of the parliament.

Some PR systems allow voters to vote for candidates as well as parties, but, generally, order on party lists remains a defining characteristic of proportional rule. Sweden has recently adopted a limited form of preference voting. The revised election laws allow each voter to indicate a special preference for a single candidate by writing in his or her name on the ballot. Alternatively, the voter can simply accept the order in which names are listed by the party. For example, a Swedish law was adopted June 1, 1997 (*Election Law* 1997: 157) that replaced *Election Law* (1972: 620) and also a law regarding elections to the European Parliament (1995: 374). The Swiss electoral system also allows voters to affect the order of candidates on party lists. See, for example, *Swedish Laws* (Swedish Law Collection), Rixlex, Sveriges Riksdag. See also “Elections to the Swedish Riksdag,” http://www.riksdagen.se/faktabl/f01_val_en.htm.

⁹⁰ For example, Weibull (1993: 149) does not attribute a *party* to prime ministers selected before 1905. Verney (1957: 246) states that party membership figures are not available before 1905, although he discusses various policy alignments within the Riksdag during the nineteenth century. His table 11 provides evidence of increased party discipline, tabulating disagreements between the first and second chambers of the Swedish parliament. The approximate date by when the Riksdag was entirely elected by the rules adopted in 1909 is 1920. Note that before 1920, more than three times as many disagreements occurred per year (57) as after 1920 (15). This increase in agreement was not entirely the result of dominance by the Social Democrats. To the extent that party affiliation can be determined before the 1909 reforms, the “conservatives” appear to have dominated policy formation in a manner roughly comparable to that of the Social Democrats after reform, including substantial periods when they relied on the Farmer’s Party for support in the Riksdag. See Verney (1957: ch. 5) or Hadenius (1999: ch. 1).

an interest in limiting competition from new parties, Duverger suggests that parties will tend to adopt such blocking positions. Consequently, “two” is the natural number of parties in such systems. Two, however, can become many in such electoral systems if regional electorates each support two parties, but the regions differ in the particular parties who take the entry blocking positions. In some cases, regional differences can be so great as to prevent true national parties from emerging, as might be said of the United States during the period of the so-called Dixicrats or of contemporary France and Canada.

The analogous entry-blocking configuration in a PR system allows many more *national* parties to coexist in equilibrium. The minimum stable number of parties is determined by the participation threshold. If n is the threshold for a party to receive seats in parliament, an alignment in which each party receives just a bit less than twice the minimum will be stable, because no new party can enter and receive sufficient votes to qualify for parliament. For example, if the participation threshold guarantees any party with 4 percent of the vote a seat in parliament, 13 different political parties could be represented in a policy-platform alignment that would block entry by additional new parties.⁹¹ Consequently, parliaments elected via PR systems tend to include many more

political parties than first-past-the-post systems, unless ideological and economic interests differ substantially by geography.

The relatively large number of parties that tend to arise under PR systems implies that government policies are made by coalitions of political parties, because a single party is unlikely to win a majority the seats in parliaments. In such governments, the policies adopted will tend to be compromises among the policy goals of the various coalition leaders. To the extent that the pivotal coalition member represents the interests of the median voter, the central tendencies of electoral competition models are preserved, although they are weakened somewhat by the effects of party leaders.

Persson and Tabellini (2000), for example, suggest that differences in the size of the districts and coalitional governance tend to produce relatively larger and more general government programs in PR systems than in parliaments based on single-member districts.⁹²

E. Amendment Procedures, Review, and Constitutional Reform

The formateurs that create a new government naturally take into account the policy effects of alternative standing procedures for making policy decisions, as do those persons

⁹¹ Duverger’s theorem applies to plurality rule elections. If two parties locate somewhat to the right and left of the median voter, the assumptions of spatial voting models imply that no new party can enter and win an election. (Two parties positioned exactly at the median voter’s position would not be a blocking alignment, because an entry somewhat to the left or right of the median could secure a larger vote than either of the two parties.) This is one explanation for the number and position of major political parties in the United States.

The counterpart to Duverger’s theorem in PR systems occurs when a sufficient number of equally sized parties position themselves so that no new party can enter and secure sufficient votes to participate in government. For example, thirteen equally sized parties would each receive approximately 7 percent of the votes under PR. Any new party that attempted to locate between two adjacent parties would receive at most one-fourth of the votes of two adjacent parties, 3.5 percent, which is insufficient for representation if the participation threshold is 4 percent, as it is currently in Sweden.

See Mueller (1989: 222) for a discussion of Duverger’s theorem. Mueller (1996: ch. 10) also notes that plurality vote systems do not always yield parliaments with relatively few parties. Duverger’s theorem evidently does not apply to all plurality systems, especially in countries with distinct regional differences in the pattern of voter preferences and party strength.

⁹² Corruption and the effects of interest groups can also be greater under PR systems. Any intra-party coalition that can determine a party’s leadership can also control the party lists. In this way, organized interest groups cannot only secure effective control over party platforms, but also over *whom* the members of parliament will be. Placing a senior party officer or prominent member of an interest group near the top of a party list allows such persons to be elected to parliament under proportional representation, whereas those same persons might have been rejected under a first-past-the-post electoral system as being too narrow or personally unattractive. PR, thus, allows the leadership of major interest groups to play a *direct* role in policy formation within such parliaments. This power, of course, remains checked by the necessity of electoral success, but may be expected to affect party platforms both inframarginally and at the margin.

who subsequently have authority to adopt reforms within preexisting institutions. This implies that the combinations of voting rules and franchise observed in history are not accidents of history, but rather reflect ongoing constitutional negotiations among those with the authority to adopt reforms. For example, the Prussian wealth-weighted representation system and the Swedish wealth-weighted voting system were adopted as a means of securing agreement for other more or liberal reforms. Proportional representation, similarly, made universal suffrage more acceptable to conservative parties in the nineteenth century, because proportional representation assured that conservative parties would continue to influence policy after universal suffrage was adopted.

Opportunities for major revisions of the architecture of government, however, are constrained by existing formal and informal procedures for constitutional reform and by procedures of constitutional review. In most cases, specific procedures for amendment and review are included in constitutional documents. For example, formal amendment procedures in the early nineteenth century usually required agreement among majorities in the chambers of parliament and between the parliament and the king. In some cases supermajorities within parliamentary chambers were required. In cases in which the amendment procedures were unwritten, but “understood” by the parties that could jointly adopt such reforms, similar combinations of parliamentary approval and royal assent were normally required.

For example, election law, the degree of government decentralization, and procedures for appointing cabinet ministers are determined by ordinary legislation in most parliamentary systems. Changes in these procedures that were formally adopted required simple majorities in parliament and final approval by the king during the early nineteenth century, although the royal chief executive’s veto power dwindled during the century.

In cases in which major reforms are too difficult to adopt formally or only minor reforms are sought, policymaking procedures may be changed informally without going through a formal amendment or legislative process. The words of a constitutional document can be reinterpreted, or the terms codified in constitutional documents may be

augmented by informal side agreements of various kinds. Other durable laws that are not themselves formally constitutional may be similarly revised through changes in administrative decisions.

Such informal changes in core procedures and constraints are often products of gradual shifts in the meaning of words and scope of norms, rather than revolution, and may enhance the durability of constitutional law by increasing its ability to adjust to new circumstances, although such changes also tend to reduce the importance of written documents and formal amendment procedures.

Constitutional Review

Standing procedures for constitutional review, tend to reduce the extent to which a written constitution can be informally amended, because such procedures determine the official interpretation of written documents, which limits the ability of government officials to interpret the constitution in the manner that maximizes their discretion over policy. In many cases, constitutional review is conducted through a court system, in other cases, through special committees in parliament, and in a few cases, through electoral pressures alone. The significance of court proceedings increased somewhat throughout Europe during the nineteenth century, although the judiciary had long played significant roles in day-to-day governance and constitutional interpretation in many countries (Montesquieu 1748/1914; Bergman 2003; Field 2001).

During the eighteenth and nineteenth centuries, the king’s ability to appoint judges and senior government lawyers also gradually shifted to parliament along with other policymaking authority. This indirectly had the effect of supporting the “rule of law” over the “rule of man,” because new laws were increasingly determined through the formal procedures of parliament, even in countries in which new laws remained *formally* royal mandates informed by parliament’s advice. Deference to courts on constitutional matters tends to reinforce institutional conservatism, because “the law” in most countries is regarded as a long-standing collection of rules and procedures with a high degree of

functionality and normative support, and the courts are supposed to interpret, rather than reform, existing laws.⁹³

Formal amendment procedures tend to be among the most difficult procedures to reform; so, it is not surprising that, in most cases, the age of a particular constitution is measured by the *period in which its rules of amendment are followed*, rather than by the period in which particular political procedures and constraints have been in place. By this measure, the Constitution of the United States is generally regarded to be more than 200 years old, although it has been amended 27 times, most recently in 1992.⁹⁴

F. A Digression on the Policy Effects of Constitutional Reform

Although most rational choice theories and many historical narratives imply that constitutional reforms affect public policy, such conclusions are not universally accepted. Several historical theories and several rational choice-based theories imply that the details of the procedures through which public policy is made are of little consequence. For example, many political historians from the sociological tradition note that the existence of a broad consensus on what constitutes “good public policy” will tend to affect public policies under a variety of institutional architectures. If that is true, the particular political parties in power at a given point of time would not matter much, because all potential leaders would reflect the *zeitgeist* of that time. Such arguments play a role in the theory of democratic reform developed in chapter 8. Shifts in theories of the good society (liberalism) are the most likely explanation of suffrage law reform; although, the model never assumes that all parties come to share the same theories of the good society

irrespective of their income, education, or occupation. In contrast to most *zeitgeist* theories of transformation, the analysis predicts that significant differences will continue to exist in the normative theories of both voters and policymakers.

Theoretical reasons for “party-neutral” political outcomes also exist for majoritarian polities in which persons disagree about public policies. For example, rational choice-based analysis of electoral competition predicts that democracies tend to adopt the policies that are most favorable to the median or average voter, unless a particular candidate is highly regarded for other reasons. The median voter, essentially by definition, has policy preferences that are moderate or centrist and party platforms tend to converge toward the preferred policies of the median voter as each party attempts to maximize its vote share. It is, thus, possible that all democracies, regardless of the details of majoritarian voting rules and the division of power among those elected, yield essentially the same policy outcomes, even when most voters disagree about policy.

Another quite distinct strand of public choice research reaches more or less similar conclusions by stressing the importance of organized interest groups, rather than elections. Public policy in such models is here simply the result of an equilibrium balance of influence among organized interest groups. See, for example, Olson (1962), Peltzman (1976), Becker (1983), Congleton (1991), or Congleton, Hillman, and Konrad (2008). In such models, public policies tend to reflect persuasion, bargaining, and bribery conducted secretly “behind closed doors,” rather than formal institutions. Such bargaining clearly plays a role in constitutional exchange as well. Most such interest group models predict unique outcomes for given alignments of economic interests and that moderate policies

⁹³ Kings often found judicial independence and stable rules to be an effective method of encouraging rule following by their aristocrats and citizens, as long as they could appoint the judges. The independence and authority of the judiciary emerged gradually through a long series of quasi-constitutional bargains analogous to those described above for kings and their tax councils (Finer 2006, Bergman 2003). Evidence that judicial independence affects the size of governments and economic prosperity has been developed by Tridimas (2005) and Feld and Voigt (2006).

⁹⁴ A bill of rights was passed soon after the constitution was adopted in 1787 as a group of 10 amendments. The manner in which the vice president is selected was changed in 1804. The manner in which representatives are selected for its federal chamber, the Senate, was changed by the seventeenth amendment in 1913 as direct election of senators replaced appointment by state governments. Suffrage rights for blacks and women were greatly expanded by the 15th and nineteenth amendments (1870 and 1920), and the term of office for American presidents was limited to two terms by the 22nd (1951). Despite all these procedural reforms, the constitutional regimes of the United States is normally dated to 1789, rather than to the dates of its most recent amendment, 1992, or to the *Articles of Confederation* or its colonial precursors.

will dominate extremes, although there is no presumption that the median or average voter per se gets the policies that he or she finds most desirable.

It bears noting that one can accept the usefulness of both types of models, yet disagree with their conclusions about the effects of constitutions. Pure electoral models usually neglect the influence of suffrage law, because they tend to focus on modern democratic polities with stable voting procedures. As noted above, suffrage systems are quite complex, and a good deal of evidence exists that changes in electoral systems affect representation and public policies. Pure interest group models generally forget to mention that the cost of organizing effective interest groups and avenues for influence is largely determined by constitutional provisions other laws that regulate voluntary association, the dissemination of information, and access to high officials. Lobbying is clearly easier when formal procedures for testifying in parliament are in place and when such groups are subsidized than it is in settings in which formateurs are punished for trying to organize such groups and publication or proposed reforms are heavily censored by state officials. Reduced censorship clearly played a role in the emergence of politically active groups in nineteenth-century Europe.

G. Overview and Conclusions: Constitutional Reform as Constitutional Exchange Constrained by Institutions and Institutional Conservatism

This stability of policy making procedures is a consequence of a number of factors noted in part I of this book. First, current institutional arrangements tend to be in the interest of those with the power to reform them, because it is under those institutions that they rose to positions of authority. Second, stability tends to increase the effectiveness of government by creating predictable incentives for advancement that tend to align individual interests within the organization with those of the organization as a whole. In king-dominated systems, personal advancement will be most likely for persons advancing royal interests. In parliament-dominated systems, personal advancement will tend be more rapid for those perceived to advance electoral (median voter) interests. Third, stability is increased by institutional conservatism. Predicting how a given reform will affect

long-term political and economic equilibrium is normally a nontrivial exercise, and the larger a proposed reform, the more difficult this task tends to be. Risk-averse policymakers and others with a stake in the performance of government will, consequently, tend to resist major reforms. “If it ain’t broke, don’t fix it.” Fourth, most governments include standing procedures that tend to increase constitutional stability. Both constitutional courts and formal processes of constitutional amendment tend to make major reforms more costly.

These stabilizing characteristics of all organizations do not imply that policymaking procedures are never reformed, but rather that most reforms are minor ones, because the advantages and risks associated with minor reforms are more easily appraised and smaller those associated with major reforms. Nor does the fact that constitutional reforms tend to be “small” imply that significant reforms never occur. It only implies that, in most cases, significant reforms are adopted gradually. The “market for power” is not one dimensional, because the procedures for adopting new public policies include a large number of details over which bargains potentially can be struck. Consequently, proposals for reform will be nearly constant in most polities, although reforms will be less frequent than proposals. Constitutional gains to exchange arise when changes in external conditions or in personal beliefs produce sufficient new benefits among those with the authority to modify standing procedures that a particular reform advances their interests—in spite of all of the advantages of continuing existing procedures. Such constitutional bargains will be carefully crafted and intentional, rather than spontaneous expressions of the “general will.”

For example, the proportional representation method of selecting parliament was widely adopted in continental Europe in constitutional bargains that also secured universal male suffrage. PR allowed conservative parties that feared extinction under first-past-the-post electoral systems to be assured of continuation under broad suffrage. In such cases, older electoral systems were replaced in exchange for broader suffrage rules. Shifts to PR and weighted voting were also considered in the United Kingdom as it

moved toward universal suffrage, but in the end, rejected by both conservatives and liberals, who believed that single-member districts would be sufficient to guarantee their continued influence over public policy, given the distribution of voters among electoral districts.

Although most constitutional reforms tend to be relatively modest “conservative” changes, nearly any reform to a long-standing institution can be regarded as “radical” in the sense that it flies in the face of convention; thus, it is not entirely surprising that those taking credit for constitutional reforms often use rather extravagant rhetoric to characterize their results. Even small changes can be consequential. Notable reforms of governance in nineteenth-century Europe include (a) gradual shifts in policymaking authority from the Crown to parliament, (b) increases in the breadth of the franchise, (c) adoption of electoral districts and rules that increasingly promoted civic equality (one-man, one-vote), (d) changes in the organization of parliament (the number of chambers) that reduce aristocratic privilege, and (e) reforms that reduced government-sponsored internal and external barriers to trade.