

# Democratic Constitutional Design and Public Policy: Analysis and Evidence

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The participants agreed that a volume that surveyed the empirical results of the new rational choice–based constitutional analysis would be very useful, and with that in mind, the papers included in the present volume were solicited, revised, and edited. The Persson and Tabellini paper was subsequently published in the *Journal of Economic Perspectives* (2004) and appears with the permission of the American Economic Association.

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There is a longstanding tradition of constitutional analysis in political science and law that extends back to Aristotle's *Politics*. For the most part, that tradition stresses the importance of culture and history as determinants of a nation's public policies, but also accords political institutions a major role. That tradition is also inductive insofar as scholars attempt to induce general principles from intra- and inter-national case studies. The literature surveyed and extended in the present volume has deductive rather than inductive foundations. The rational choice-based literature addresses the longstanding issues of constitutional design, but also addresses new research questions that arise naturally in rational choice analysis, but not historical work. The pace of constitutional research accelerated during the 1990s. The new results do not necessarily overturn the conclusions of historical analysis or earlier studies, but extend our understanding of political institutions by applying more rigorous models and testing sharper hypotheses using modern statistical techniques.

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**Bruno S. Frey and Alois Stutzer**

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#### **Torsten Persson and Guido Tabellini**

Persson and Tabellini extensive survey of the recent literature on electoral institutions discusses their implications for some central features of representative democratic political constitutions and also how different electoral rules and forms of government affect the accountability of elected government officials. Their pioneering work suggests that accountability affects the size of political rents and corruption. They conclude that presidential and parliamentary systems and plurality and proportional representation electoral systems have significant effects on the representativeness of government and fiscal policy choices. Extensive empirical evidence is consistent with their analysis. Government expenditures per capita are systematically higher under proportional representation (PR) and parliamentary systems than under presidential and plurality systems.

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Proportional representation systems tend to have multiseat districts, party lists, and multiple parties, whereas majoritarian systems tend to have geographically based, single-seat districts, district representatives who are chosen by plurality rule, and a two-party system. A relatively new electoral system is the mixed-member electoral system in which some of the legislators are elected through a majoritarian procedure, and the rest are selected through a proportional procedure. Mixed-member electoral systems allow scholars to answer longstanding questions regarding the importance of electoral rules for legislative behavior and, subsequently, for political and economic outcomes without confounding country effects with electoral rule effects. Stratmann provides evidence from the German mixed-member system that members elected under plurality rule vote somewhat differently and seek out different committee appointments than members elected under proportionality rules.

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This chapter explores the effects of bicameralism on policy choices in representative legislatures. Congleton analyzes the simplest form of bicameralism in which two chambers are elected under similar rules and each chamber has to approve legislation before it becomes law. Simulation results and statistical evidence from the Danish parliamentary reform of 1953 and the Swedish parliamentary reform of 1970 suggest that bicameral legislatures tend to have more predictable public policy that better reflects long-term voter demands than unicameral legislatures. Congleton thus argues that bicameralism can serve a useful constitutional purpose even when the two chambers represent similar interests. Thus, bicameralism is neither undemocratic, nor redundant. He also notes that bicameralism is a form of divided government with characteristics similar to those of presidential systems.

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Crain and Bradbury argue that bicameralism arises and persists, in part, because of its ability to stabilize legislative outcomes and limit the majority's ability to take advantage of the national tax base. If this is the case, fiscal policy in bicameral and unicameral legislatures ought to differ. Recent empirical studies using international data and U.S. state data suggest that

bicameral legislatures are associated with lower public expenditures in comparison with unicameral chambers after controlling for other variables. Moreover, differences in the degree of constituent homogeneity between the two chambers have a systematic effect on spending and tax policies. Greater constituent diversity between the chambers appears to constrain fiscal policies to those that more broadly promote the general welfare within the polity of interest.

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Mueller reviews the extensive literature on the effects that decentralization has on the performance of local governments. In principle, decentralized governance could improve or worsen the provision of local services relative to a centralized unitary state. Both the benefits and costs of decentralization arise from the greater mobility that exists among local governments than among national governments. Mobility tends to increase the homogeneity of preferences in local communities and also the informational base that voters use to assess local policies. These affects narrow the gap between what voters want from government and what they get. This gap may be further reduced through the use of some of the institutions of direct democracy. Mobility induces tax and yardstick competition among local governments, which tends to increase efficiency in provision of government services. On the other hand, federalism can impose additional costs on communities in which the migration of citizens creates negative externalities or tax competition erodes government revenue sources. The empirical evidence, however, implies that the benefits from decentralization outweigh its costs. Mueller thus concludes that decentralized forms of federalism are an attractive constitutional designs for countries seeking more responsive and efficient democratic institutions.

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Decentralization can also affect the policy choices of a nation's central government. For example, local public goods financed from a national tax base provide concentrated benefits to recipient jurisdictions, but disperse costs throughout the nation as a whole. In central legislatures, this common pool situation creates incentives for each legislator to increase spending in their own jurisdiction and restrain spending in other jurisdictions due to the associated tax costs. The inefficiencies associated with this common pool

problem are often considered a key drawback of decentralization. Knight surveys empirical studies on the fiscal commons problem. This literature finds strong evidence of behavioral responses by both individual legislators and aggregate legislatures. Small population jurisdictions, which are often overrepresented in central legislatures and have low federal tax liabilities, tend to reap the largest benefits from common pool situations.

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An economic constitution provides a stable legal and economic framework within which people undertake their economic activities. This paper uses a subset of a widely used economic freedom index to measure the quality of a nation's economic constitutional framework and shows that better economic institutions and policies, as measured by this subindex, lead to greater economic prosperity within OECD countries. These new results and other more encompassing studies that rely on a broader range of countries suggest that the economic freedom index is a useful guide to both constitutional design and public policy. To encourage economic development, civil law and public policies should protect property rights, minimize the regulation of economic transactions both within the country and across national boundaries, and open capital and financial markets.



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This chapter surveys the wide range of procedures through which modern democracies may formally amend their constitutions. Most democratic constitutions include a formal process of amendment, but these procedures vary widely. The empirical work surveyed by Rasch suggests that more demanding amendment procedures tend to decrease the number of formal amendments observed, although the result is not robust. Moreover, although the formal amendment process is the main path of constitutional change in democracies, it is by no means the only one. Rasch and Congleton note that there are many informal routes to constitutional reform as well as the formal procedure specified in a nation's constitutional documents.

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Weingast analyzes what makes some constitutions more likely to survive than others. He briefly surveys the theory of self-enforcing constitutions and then applies it to nineteenth-century United States and twentieth-century Spain. Both constitutional durability and stability can be increased by informal agreements among powerful elites that reduce the probability of revolution by formally or informally reducing the stakes of public policy. Weingast argues that, but for the issue of slavery, constitutional democracy in the United States was self-enforcing by about 1800. Nonetheless, crises over slavery threatened the nation on numerous occasions, because slavery threatened the wealth and power of Southern elites. Similarly, many of the threatening issues that divided Spaniards in their civil war reemerged after Franco died in 1975. In the Spanish case, however, despite a history of violence over this wide range of fundamental controversies, Spaniards resolved their differences peacefully through a series of pacts that reduced the stakes of the new political regime.