

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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1. Introduction: Rational Choice Politics and Political Institutions

Roger D. Congleton
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Abstract. Research on constitutional design is not new, but there is much that is new in modern research. An extensive rational choice–based literature emerged in the second half of the twentieth century that addressed research questions neglected by the longstanding historical approach to political and constitutional analysis. History is not neglected by the new approach, but is used as a source of data for statistical tests rather than as the main focus of analysis. In the past two decades, research on democratic constitutional design has greatly accelerated. This chapter provides an overview of a half century of rational choice–based research on constitutional design and the research surveyed in this volume.

I. Introduction

Democracies are not all created equal. Electoral systems may be based on proportional representation or plurality rule or any combination of the two. The executive may be accountable to the legislature, as in parliamentary systems, or directly elected by the people, as in presidential systems. The legislature may have one or two chambers, the judiciary may be more or less independent of the other branches of government, and local and regional governments may be more or less autonomous. Democratic governance may be subject to more or fewer constitutional and legal constraints. The potential variety is very large, both regarding the broad institutional characteristics of governance and regarding institutional details.

Do these differences matter? If “the people” spoke with a single voice, it is possible that the institutional details of democratic governance would matter little. Policy choices might be identical under all democratic systems if a single,

essentially unanimous voice ultimately determined policy or selected representatives—provided that these representatives were able and willing to carry out the people’s wishes faithfully. However, the people do not speak with a single voice and elected representatives do not always faithfully represent the interests of their principals. Consequently, differences in constitutional procedures and constraints are very likely to affect public policy. Although citizens may or may not have preferences about political processes, they most certainly have preferences regarding policy outcomes. Therefore, knowing the policy effects of alternative political institutions is an important prerequisite for informed constitutional choice.

This volume surveys and extends recent empirical evidence on the policy effects of alternative democratic constitutional designs. Its purpose is to take stock of what we know about the political and economic effects of constitutional design with special emphasis on the accumulating empirical evidence. The focus is on the rational choice–based literature, and the papers, for the most part, belong to the field of political economy, although they also include contributions from the rational choice strand of political science. The contributors to the present volume have all made substantial contributions to the new research on constitutional design, and several are among the pioneers in this field of research.

The empirical analysis focuses for the most part on the experience of the OECD countries. The OECD countries have had relatively stable forms of constitutional democracy for half a century or more and also have extensive reliable data sets on which to base empirical analysis. These features make them excellent laboratories in which to assess the impact of small differences in democratic design. In the OECD countries, it is likely that the strategies used by politicians, political parties, and politically active interest groups are mature reflections of their political institutions rather than historical accidents or temporary experiments of one kind or another. This allows the equilibrium

effects of alternative democratic constitutional designs on public policy and, indirectly, on prosperity to be estimated and compared. Evidence from broader international studies is largely consistent with the OECD experience and is also reviewed and extended in several of the chapters.

Five general areas of empirical research on constitutional design are analyzed in this volume. Part I analyzes the effects of electoral systems on public policy. Part II analyzes the effects of alternative decision-making processes within the legislatures of representative democracies, including the effects of bicameral legislatures. Part III analyzes the effects of decentralization on public policy formation. Part IV examines the economic effects of a nation's legal and regulatory setting, what might be considered a nation's "economic constitution." Part V analyzes dynamic aspects of constitutional design. The empirical research surveyed and extended by this volume implies that even relatively small differences in the fundamental procedures and constraints of democratic governance can have relatively large effects on politics and public policies.

II. The Rational Choice Approach to Constitutional Analysis

This chapter provides an overview of the rational choice analysis of democratic constitutional design followed by summaries of the individual chapters. The overview is not meant to provide an exhaustive survey, but rather to provide the reader with a sense of the origins, breadth, depth, and pace of the new literature. More complete surveys can be found in Mueller (2003) and Persson and Tabellini (2000b), although they do not focus on the constitutional literature as such. The literature reviewed in this chapter describes what is new about rational choice-based constitutional research, how this research has developed in the post-war period, and how it has split into three essentially independent clusters of researchers.

This volume brings together leading scholars from these more or less independent research groups—specifically the public choice, new institutionalist,

and new political economy groups—in order to assess what we have learned from recent empirical research on democratic constitutional design.¹ Particular areas of constitutional research are covered in depth and extended by the individual chapters. Overall, the empirical research surveyed and extended by this volume implies that the details of democratic constitutional design have significant effects on the development of public policy.

What Is New in the New Literature?

Analysis of the properties and relative merits of alternative political institutions is approximately as old as government itself. Every ruling council and every ruler confronts the problem of organizing governance, and nearly all are interested in effective rules and routines for governmental decisionmaking. Practical analyses of alternative ways of organizing public policymaking is, therefore, very ancient indeed. Scholarly work on constitutional design is a somewhat more recent phenomenon, but has been an important part of social science from its inception. Indeed, Aristotle's impressive study in 350 BC of the city constitutions of 158 Greek polities continues to draw attention more than two thousand years after its completion. Subsequent scholarly work continued during the next two thousand years, and played an important role in the

¹ It may be surprising to some readers that the work of economists accounts for so much of the research covered by this volume; however, relatively few political scientists or constitutional scholars use rational choice models and statistical analysis to examine the effects of political institutions on public policies. Economists, by contrast, not only share an analytical approach based on rational choice, but also have a shared interest in the economic effects of public policy and have become increasingly interested in the effects of political institutions on those policies. Although the contributors to this volume have this in common, there are also significant methodological differences, as is evident in the individual contributions. Overall, however, there is broad agreement that the details of constitutional design have quantifiable effects on a nation's ongoing politics and public policies.

democratic constitutional revolutions of the eighteenth, nineteenth, and twentieth centuries.

Given the long history of constitutional research, one might reasonably wonder whether modern work can add anything truly new to this enormous literature. However, there is a much that is new in recent research. New methods of analysis have generated new models of political behavior, new empirical evidence, and new research questions—all of which advance our understanding of the relationships between institutions, political processes, and public policies.

Conclusions derived from inductive reasoning alone are based on detailed information about a specific event or set of institutions, but such conclusions cannot be easily generalized beyond the specific events or institutions analyzed. Thus, analysis of politics from the long-standing legal and historical perspectives is limited to the constitutional documents, politically active persons, and circumstances actually observed in history. In contrast, the point of departure for much of the new literature is an analytical model rather than a specific case history. A mathematical model describing the behavior of rational individuals within a particular abstract institutional context is developed, and the effects of institutions on that behavior are determined by changing institutional assumptions.

This deductive approach allows constitutional analysis to take place in an “other things being equal” environment that isolates the effects of decision rules and constraints from the wide variety of personalities, culture, and crises that infuse politics in historical settings. The “rational choice” approach, thus, represents a sharp break with the longstanding historical approach to constitutional analysis—indeed a paradigm shift. It allows sharp hypotheses about the *general* effects of institutions on public policy formation to be formulated and tested for logical consistency.

The use of game theory and rational choice models to analyze politics and constitutional design tends to focus attention on many technical issues of narrow

interest to model builders. Are there stable electoral equilibria and dominant political strategies within democracies? If equilibria exist, how are equilibrium strategies affected by electoral rules and other constitutional procedures and constraints? What does it mean to be rational within the context of a specific model? Answers to many of these narrow technical questions, however, have broad implications for real institutions. The existence or absence of equilibrium strategies may reveal that some forms of government are fundamentally more stable than others. The effects of constitutional rules on political equilibria imply that constitutions may affect policy choices in a manner that is independent of culture or history.

The subsequent use of statistical methods to determine whether the relationships discovered analytically are present in the real world also breaks with the longstanding historical analysis of constitutional design in several ways. Most statistical methods require both models and quantitative data, whereas traditional historical techniques do not. Contemporary statistical techniques, consequently, encourage the development of *new models and the collection of new historical facts*. The new facts take the form of numerical measures and more finely gradated classifications of constitutional design. The new models reflect past empirical evidence and analytical innovation, but the research cycle of model, test, and revision yields conclusions that are increasingly robust to model assumptions, data sets, and statistical techniques. The ultimate aim of the new approach is a science of constitutional design.

The Rational Choice Approach to Political Analysis

The rational choice-based approach to constitutional analysis has its roots in the economic analysis of politics that emerged shortly after World War II. The post-war literature rediscovered and reenergized the rational choice approach to

political analysis.² Many of the core ideas of electoral equilibria that inform contemporary models of democratic systems were developed in the first two decades of research (Black 1948, Arrow 1954, Duverger 1954, Downs 1957, Riker 1962, Plott 1967). For example, Duverger (1954) suggests that two-party systems tend to emerge in “first-past-the-post” electoral systems. Game theory implies that when two parties compete for elective office, there is a tendency for their proposed platforms to converge to that preferred by the median voter (Black 1948 and Downs 1957). Duverger (1954) also suggests that coalition governments are more likely under proportional representation than under first-past-the-post systems. Majority coalitions must also please the median voter, but will generally adopt policies that reflect the bargaining power and positions of the parties included in majority coalitions. In more general circumstances, however, pluralistic collective decision rules, unfortunately, may lack a definite equilibrium (Black 1948a and 1948b, Arrow 1954, Plott 1967).³

The post-war public economics literature (Samuelson 1954, Riker and Tiebout 1956) demonstrated that public policies might improve on the results of private markets in cases in which private transactions fail to obtain Pareto-

² It is sometimes said that the new rational choice models were borrowed from economics. It would be more accurate to say that such models have emerged more or less simultaneously in all the social sciences as tools from applied mathematics became available. Here, one may note that Condorcet (1785) and Borda (1781) were developing rigorous models of political decisionmaking at about the same time that Adam Smith (1776) was developing his well-reasoned, but intuitive theory of the wealth of nations (McClean 1995).

³ The application of mathematical models and game theory to politics is approximately as old as rational choice politics. The game-theoretic models of Black (1948), Arrow (1954), and Duverger (1954) emerged at about the same time that game theory (Luce and Raiffa 1957) and general equilibrium theory (Debreu 1957) gained wide currency among economists. One of the most surprising results of the application of rational choice models to democratic politics were the various impossibility theorems, particularly Arrow’s very general result. In many cases, majoritarian politics may not have a stable equilibrium.

efficient results. A variety of such models provide analytical foundations for a theory of the productive state. It was also clear, however, that actual governmental policies did not always resemble those of the productive state characterized by public economics. Tax and transfer systems had clear excess burdens, many externality problems were ignored, and many others were over- or mis-regulated.

In the 1960s and 1970s the new political research attempted to explain why public policies were less effective than public economics implied they could and should be. Policy failures within democracies can emerge because of a variety of information- and institution- induced political agency problems. Several of the first models of the effects of politically active interest groups (Olson 1965) and the bureaucracy (Downs 1965, Niskanen 1971, Breton and Wintrobe 1975) imply that governments do not always adopt policies that advance broadly shared interests or even those of the median voter; indeed, cases existed in which governmental regulators were “captured” by the industries they were charged to regulate (Stigler 1971, Peltzman 1976, Laffont and Tirole 1991). Moreover, interest group efforts to influence government tax and regulatory policies not only redistribute income in undesirable ways, but may themselves consume considerable resources (Tullock 1967, Krueger 1974, and Posner 1975).

The electoral and interest group analyses of democratic politics remained largely independent literatures during the 1970s and early 1980s, with significant extensions of the electoral and interest group models. For example, Breton (1974) explicitly considered polycentric policymaking within democracies and argued that bargaining among centers of authority and within coalitions determines public policies. Browning (1975) pioneered intergenerational analysis of elections and demonstrated that long-term public policies such as social security are affected by the timing of those policies and differences in the interests of successive generations of voters. Meltzer and Richards (1981) demonstrated how an economic and electoral analysis could be integrated to explain the magnitude

of redistributive programs. Becker (1983) provided a more general comprehensive model of interest group politics, whereas Denzau and Munger (1986) showed how unorganized interest “groups” might also influence democratic politics. In the late 1980s and early 1990s, several more complete models of democratic politics were developed that formally brought interest groups and informational problems into electoral models (Austin-Smith 1987; Congleton 1989; Coughlin, Mueller, and Murrell 1990; Grossman and Helpman 1996). These more complete models also implied that elected officials in open democracies are not always completely faithful agents of their electorates.

Statistical tests of the hypothesized relationships between economic and political variables and policy outcomes were undertaken using a variety of national data, although for the most part the theoretical literature outpaced its empirical counterpart. For example, the median voter, spatial voting, and complete models received considerable empirical support (Holcombe 1977, Denzau and Grier 1980, Congleton and Shughart 1990, Poole and Rosenthal 1991). The extent of political agency problems, however, continued to be controversial. On the one hand, research such as Weingast and Moran (1983) and Wittman (1995) suggests that political agency problems are not as bad as some of the early theoretical work suggests or at least no worse than in the private sector. On the other hand, a substantial literature suggests governmental bureaucracies are generally less productive than their private counterparts (Davies 1971, Crain and Zardkoohi 1978, Boardman and Vining 1989). Research on government corruption also suggested that political agency problems can be severe (Rose-Ackerman 1978 and 1999).

Regardless of whether agency problems are worse in the public sector than in the private sector, however, an important institutional design question is whether political agency problems can be reduced by an appropriate choice of political institutions. That question was also addressed by the rational choice literature, and is addressed at several places in this volume.

III. Rational Choice, Constitutional Design, and Public Policy

From a game theoretic perspective, constitutions are the “rules of the political game,” and public policy is a consequence of the strategies adopted by politicians, voters, and the bureaucracy under those rules. This implies that different constitutions may lead to different public policies, which allows the relative merits of alternative constitutional designs to be analyzed using tools developed from game theory and public economics. If constitutions affect public policies and some policies are better than others, then some constitutions are better than others. In particular, constitutional designs can potentially improve democratic governance by better aligning the equilibrium strategies of elected officials with the shared long-term policy interests of the electorate.

Buchanan and Tullock (1962) use such reasoning to explain the use of a variety of voting rules within modern democracies. When downside risks associated with new public policies are relatively large, supermajority approval will protect the shared interests of the electorate. When these risks are small or the benefits of immediate action are large, minority or executive decisionmaking may be employed to reduce decision making costs. Similarly, Oates (1972) demonstrates that decentralized forms of government decisionmaking and finance tend to produce public policies that cannot be worse than those associated with centralized control and may well be better, unless there are substantial economies of scale in the production of government services. Tullock (1980) argues that different judicial systems may have systematic effects on crime and the extent of litigation. Shepsle and Weingast (1981) and Hammond and Miller (1987) demonstrate that institutions can reduce uncertainty about policy outcomes by increasing the policy domain in which democratic politics have a stable equilibrium. Within the United States, the internal organization of the Congress--committees and memberships of those committees--were shown to have significant effects on the formation of public policies (Ferejohn 1974, Strom 1975, Holcombe and Zardkoohi 1981).

Comparative work on the policy effects of political institutions during this period was for the most part focused on Switzerland and the United States, because their federal systems and histories generated significant institutional variation among their regional governments. For example, the variation among Swiss cantons with respect to their use of the institutions of direct democracy allows an analysis of the effects of popular initiatives and referenda. Within the United States, the constitutional architecture of states is more uniform (all use the same electoral system, all include an elected governor, and all but one a bicameral legislature), but the details of state fiscal institutions vary substantially. These intranational variations have allowed tests of various constitutional features, such as referenda, balanced budget rules, and veto power (Abrams and Burton 1986, Holtz-Eakin 1988, Crain and Miller 1990, Carter and Schap 1990). Referenda appear to reduce political agency problems, but the effects of other fiscal institutions were empirically less robust. The political and policy effects of those institutions, if any, were evidently more complex than the early analyses assumed.

A parallel literature in macroeconomics investigated the relationship between institutional structures and a nation's macroeconomic policies. There is often a tension between democratic politics and stabilization policies (Nordhaus 1975, Buchanan and Wagner 1977). Even well-behaved democratic governments are evidently inclined to misuse macroeconomic policy tools in the short run and expand the public debt and monetary base more rapidly than in the long-term national interest (Nordhaus 1975, Hibbs 1977, Toma and Toma 1986, Grier 1989, Alesina and Tabellini 1990). Deficits may be controlled to some extent by constitutional structures such as direct democracy (Pommerehne 1978), balanced budget rules (Brennan and Buchanan 1980), and the line item veto (Carter and Schap 1990) within limited circumstances. Tendencies toward inflationary monetary policies may also be resolved institutionally with rule-based policies (Kyland and Prescott 1977, Cukierman and Meltzer 1986) or an independent

central bank (Banaian, Laney, and Willett 1983; Rogoff 1985), although the institutions that ensure independence were not immediately obvious. The latter led to a good deal of innovative theoretical and empirical research on credible commitment to rules and on institutional designs that can assure central bank independence (Waller 1989, Cukierman 1992).

Prior to 1990, however, the effects of constitutional architecture on political agency problems and public policy were largely neglected by theoretical and empirical work in the rational politics tradition, although a very large literature existed that used rational choice models, game theory, and sophisticated statistical techniques to understand politics and policy formation within democracies.

IV. Acceleration of Constitutional Research After 1990

Several factors contributed to a heightened interest in the role of political institutions in the 1990s. The end of the Cold War and the dissolution of the old Soviet empire led to a great wave of constitutional reform in Eastern Europe, Asia, Africa, and South America in the 1990s. These along with the gradual political centralization of the European Union brought constitutional issues to the fore. The pressing need for new constitutions revealed the limits of existing rational choice-based constitutional theories, which were unable to provide more than general structural advice that was perhaps more based on historical studies and intuition than a substantial body of careful empirical research. Moreover, a growing realization among economists that public policies failed to produce what they should led increasing numbers of economists to examine the effects of

political institutions.⁴ Public deficits, inflation, unemployment, inefficient transfer programs were increasingly seen as policy failures caused by the incentives faced by politicians and public servants, rather than a lack of information regarding the appropriate policies to pursue. These incentives, in turn, were seen to depend on “the rules of the political game.”

The 1990s saw a new wave of innovative constitutional research. For example, many books were written during the following decade that deepened the rational choice analyses of political institutions. Barnett, Hinich, and Schofield (1993) survey and extend the principal rational choice–based analyses of democratic political institutions. Alesina and Rosenthal (1995) analyze how staggered election cycles affect macroeconomic policies and the political composition of the legislature. Laffont and Tirole (1993) and Dixit (1996) explore possible contractual and institutional solutions to agency costs within the unelected portion of modern governments. Laver and Shepsle (1996) summarize and extend the literature on government formation within multiparty parliamentary systems. Mueller (1996) provides a normative analysis of the relative merits of alternative features of modern democratic constitutional design. Tsebelis and Money (1997) explore the effects of bicameral legislatures on public policies. Buchanan and Congleton (1998) demonstrate that a constitutional requirement of uniform public services can make democratic political outcomes more efficient. Wintrobe (1998) examines the political and informational constraints that authoritarian regimes confront. Gordon (1999) establishes historical links between the division of power and the extent of civil liberties in

⁴ The collapse of the Soviet empire also disrupted several longstanding academic specializations within economics and comparative politics. Scholars from these fields had invested decades of work studying the relative performance of centralized economies and one-party political systems. The end of comparisons between Soviet and Western political economic systems shifted attention toward developing and developed economic systems and also toward differences in authoritarian and democratic regimes.

republican government. Persson and Tabellini (2000b) provide an extensive overview and synthesis of the politics of government policy formation with special attention to institutions governing macroeconomics and public finance. Przeworski et. al. (2000) develops an extensive international study of the effects of constitutional designs on political stability and a nation's growth, finding that presidential systems tend to be less stable and grow more slowly than parliamentary systems. Brennan and Hamlin (2000) suggest that democratic constitutional designs should account for ethical behavior as well as self-interest. Tsebelis (2003) examines how the number of veto players incorporated into a nation's political institutions affects political outcomes. Congleton (2003) analyzes the systematic political and policy effects of four Swedish constitutional regimes over the course of nearly two centuries. Mesquita, et. al (2003) analyze policy choices within a continuum of constitutional forms in which risks of both internal and external overthrows have to be taken into account. The production of shorter pieces continued apace as several journals opened their pages up to the new constitutional research, and several new journals were also founded that focus on rational choice politics, including one devoted to constitutional analysis, *Constitutional Political Economy*.

The rational choice research program continued to be driven in large part by its own methodology as more complete models were developed using more sophisticated mathematical tools, extensive rather than normal form games, and more finely nuanced interest-based arguments. Much of the new research continued to be conceptual, analytic, and normative. Of greater interest for the purposes of this volume, is the large number of empirical papers that tested the new theories using new international data sets and statistical techniques.

For example, Grier and Tullock (1989) provide evidence that relatively more democratic countries tend to grow faster than relatively more authoritarian ones, other things being equal, which led to an extensive empirical literature that attempted to evaluate the relative importance of political institutions, culture,

and economic variables in determining economic growth rates. Knack and Keefer's very influential work (1995, 1997) suggests that culture—social capital—as well as institutional factors affect economic growth. Unfortunately, as is often the case with empirical work in the social sciences, the results of this literature are not as clear cut as one might have hoped. Gwartney, Lawson, and Holcombe (1999) provide evidence that economic policies rather than political institutions or culture are the decisive variable. Przeworski and Limongi (1993) and Temple (1999) suggest that the link between growth and indices of political liberties is less than completely robust, although economic freedom and political stability appear to encourage economic growth.

The ambiguity of these results were consistent with economic theory, which implies that political institutions will have systematic economic effects only if they systematically affect political equilibria and the subsequent policy choices of governments. Another important strand of theoretical and empirical research attempted to isolate the effects of particular political institutions on public policies. This research program was one of the most ambitious and innovative of the new lines of constitutional research.

For example, theoretical analysis of electoral competition implies that the identity of the pivotal voter and thereby the equilibrium political platforms of candidates and political parties that emerge in competitive polities are ultimately determined by election law. Thus, changes in election law should lead to changes in public policy. Lott and Kenny (1999) find the expansion of women's suffrage increased the effective demand for social insurance programs. Mueller and Stratmann (2003) find similar effects for rules that increase electoral turnout, which also change the identity of the pivotal voter, who generally becomes younger and poorer as turnout increases.

Unfortunately, the policy effects of other elements of election law and other political institutions are often difficult to untangle, and progress required more sophisticated models, data sets, and empirical techniques. For example, the

two most widely used rules for determining representation, plurality votes in single-man districts and proportional representation in multimember districts, have a variety of significant, but subtle, effects on electoral politics, government formation, and the public policies that emerge. Persson and Tabellini (1999) demonstrate that the relatively smaller size of districts within plurality systems increases the electoral advantages of targeted expenditures within plurality-based systems relative to proportional representation systems. The larger number of parties supported by PR systems also implies that coalition government is the rule rather than the exception. Lupia and Strom (1995) and Diermeier, Eraslan, and Merlo (2002) demonstrate that the stability of ruling coalitions within PR systems is affected by the rules under which governments are formed and dissolved. Coalition governments may choose to be larger than the minimal majority coalitions implied by Riker's analysis (1962), because larger coalitions are more resistant to destabilizing external shocks. Persson and Tabellini (1999) also note that the larger number of parties in government in PR systems tends to reduce incentives to attend to the overall program results, which encourages the expansion of government expenditures and deficits.

Similarly, the general architecture of governance and the division of power within a system of representative democracy have a variety of subtle effects on politics and the selection of public policies. For example, the division of policy making authority affects the flow of information available to voters. Federalism allows individuals to observe the fiscal package available in neighboring communities and punish officials at the ballot box for providing services less efficiently than their neighbors or providing less attractive fiscal packages (Shleifer 1985, Salmon 1987, Besley and Case 1995). Similarly, a divided government can produce useful information about public policy, which reduces the magnitude of political agency problems (Persson and Tabellini, 1997). The fiscal commons problem also tends to increase with the size of a nation's legislature (Gilligan and Matsusaka, 1995, 2001).

Of course, not all of the new constitutional research during recent decades was undertaken by scholars using the rational choice approach. The effects of major and minor differences in political institutions have attracted increased attention from scholars working in a wide range of methodologies. Notable among the many other contributions are multiple-volume historical studies of government by Finer (1997) and of the law by Berman (2003). Moreover, the borders among the historical, legal, and rational choice traditions are not sharp, and complementary contributions to the new constitutional research program have been made by, for example, Ostrom (1990), Shughart (1992), Lijphart (1994), Cox (1997), Cooter (2000) and Powell (2000).

Again, the aim of the present overview is not to provide an exhaustive survey of the field, but to provide the reader with a sense of the breadth and accelerated pace of constitutional research undertaken in the recent decades. More extensive reviews are undertaken in the individual chapters below.

V. Independence of the New Research Programs

Overall, the past two decades of rational choice analysis have produced a bountiful harvest of constitutional research. However, much of that work was independently conceived and undertaken. During the 1970s, the rational choice approach to politics and its associated literature came to be known as “public choice,” and ties between researchers were strengthened as public choice societies were founded in the United States, Europe, and Japan. As the rational choice research program became more widely accepted, increasing numbers of economists and political scientists used game theoretic models of political competition and interest group behavior to analyze problems central to their research. Such models were applied in subfields of economic policy analysis, including taxation, regulation, international trade, economic history, economic development, and macroeconomics. The originality and importance of this new research program has been widely recognized. For example, several researchers

have received the Nobel Prize, in part, because of their contributions to the economic analysis of politics. Among those may be counted Arrow, Becker, Buchanan, Sen, and Stigler. To these may be added Coase, Hayek, and North whose research also included rational choice analyses of political and legal institutions.

However, as the breadth of research expanded and the number of researchers increased, more specialized applications occurred and connections among scholars dwindled. Although most contemporary models and empirical work continue to reflect the insights of the pioneers, the same roots support many branches of research. Consequently, there is a broad overlap in the methodology and conclusions of recent work on constitutional design, but there is not yet an established field of constitutional political economy.

At least three clusters of constitutional researchers within the rational choice tradition can be identified. The research of these three groups tends to be known as “public choice,” “the new institutionalism,” and “the new political economy,” although many other labels would work as well,⁵ and each group could be further subdivided.⁶ These research clusters use somewhat different models, data sets, and empirical techniques; refer to different scholarly traditions of research; and address somewhat different historical and technical questions

⁵ The term “new political economy” was evidently first used by Inman and Fitts (1990, p. 81) to describe the entire rational-choice politics research program in terms with which economists would be more comfortable.

⁶ For example, the public choice group could be divided into European and American scholars, or into Virginia and Rochester schools, whose members also tend to publish in different journals and tend to work more or less independently of one another. The new institutionalism can be divided into rational choice, historical, and sociological perspectives (Hall and Taylor 1996). The new political economy might usefully be subdivided into microeconomic (labor) and macroeconomic research programs. Moreover, it bears noting that the groups overlap somewhat; thus, as with colors, it is sometimes difficult to determine to which group particular scholars or pieces of research at the margins should be assigned.

concerning constitutional design. They publish in different journals and participate in different conferences. They are members of different academic associations and are often from different parts of the world. All three groups, however, use rational choice models and sophisticated statistical techniques, and all are interested in political decisionmaking, institutions, and the interaction of political and economic variables.

The independence of these research programs has many advantages for advancing our knowledge of constitutions. The existence of several independent research programs indirectly allows researchers to pursue particular lines of research more aggressively than would be possible in a unified framework or within a single circle of researchers. The independence of research circles allows new work to be encouraged by fellow travellers rather than impeded by the various conceptual, methodological, ideological, and personal conflicts that often exist between fellow researchers. Beyond the ease of research, independence also implies that any similarities in conclusions and results are also independent and thus more likely to reflect underlying features of the phenomena under study than blinders imposed or necessitated by particular research programs or groups. In areas in which a broad convergence exists in models and results, convergence implies that some methods of thinking about constitutional design are more fruitful than others and that truly general results are possible.

Independent research programs, however, also have disadvantages. When research groups are too independent, they may not be aware of parallel developments in other groups and so fail to recognize the generality or limits of their results. New ideas and methods are less widely discussed and disseminated, and research questions at the margins of the individual groups may be neglected. Moreover, neglected conflicts and agreements as well as redundancy may cause potentially important questions to be ignored. This volume seeks to encourage a broader dissemination of the new constitutional research by including researchers from all three major research circles.

VI. An Overview of the Book: The New Constitutional Research

It is clear that the new more rigorous models, data sets, and statistical tests of the new literature can potentially extend and deepen our understanding of the political and economic effects of political institutions. However, whether increased rigor actually adds anything substantive to our accumulated stock of constitutional knowledge is itself an empirical question. This volume addresses that empirical question by providing an overview of the new empirical research on democratic constitutional design.

Our aim in assembling the present volume is to take stock of what recent research teaches us about the political and economic effects of particular political institutions. Five major areas of constitutional research are analyzed: electoral systems, legislative structure, federalism, the legal system, and amendment process. The authors are prominent researchers in the particular area analyzed and leading representatives of the three main rational choice-based research programs. Each chapter is written by a different researcher or team of researchers, and each summarizes existing theoretical and empirical research, although the emphasis is often on the research undertaken by their particular group. The careful reader will note that many of the chapter reference lists overlap only slightly, although broad areas of agreement exist in tone and substance. In most cases, the chapters also extend the areas of research surveyed.

Electoral Systems and Agency Problems

The electoral system is the most fundamental political institution in a democracy. Electoral rules determine how votes are counted, what matters are voted over, and, thereby, how voter interests are represented in elected assemblies and public policies. It also determines the extent to which voters are able to hold representatives accountable. For these reasons the election system can be expected to have several systematic effects on public policy.

In chapter 2, Bruno Frey and Alois Stutzer provide an overview of empirical studies of direct democracy and discuss its relevance for constitutional design, especially for current constitution making within the European Union. The Swiss research on direct democracy provided the first clear demonstration of the effects of different electoral feedback systems on public policies and continues to provide convincing evidence that substantial political agency problems exist within representative democratic systems. In general, the results indicate that public services are provided more efficiently and in a manner more pleasing to voters by canton governments that make the greatest use of the institutions of direct democracy, rather than those that rely more on conventional representative institutions. Similar results have been found at the state level in the United States, where popular initiatives and referenda are also used, albeit less extensively than in Switzerland. The results of this extensive literature as well as recent contributions by the authors themselves clearly indicate that elected representatives often advance interests that differ significantly from those of their electorate. The authors conclude that the institutions of direct democracy are an important corrective for such agency problems, and, therefore, greater use of direct democracy would improve government performance.

In chapter 3, Torsten Persson and Guido Tabellini provide an overview of research on the effects of constitutional architecture on political equilibria and public policy, emphasizing the contributions made by the new political economy school. This literature, to which the authors themselves have made many significant contributions, demonstrates that agency problems vary with electoral systems (proportional representation or plurality) and the forms of government (presidential or parliamentary). Theory suggests that the effects of electoral systems can be both direct and indirect. Direct effects are due to the different incentives provided representatives in different systems. Indirect effects arise from changes in party structure and government formation (single party or coalition government). The authors hypothesize that the extent of agency

problems will be evident in, for example, the degree of corruption and fiscal policies. Empirical tests of these hypotheses have used large international data sets (50–60 countries during 30–40 years covering about 500 elections) and a variety of statistical methods. The findings are consistent with political agency models. For example, plurality voting is associated with more accountability (less corruption), and PR systems tend to have somewhat broader programs of expenditures than plurality systems, in which representatives tend to target their own electoral districts. Coalition governments, a result of PR systems, tend to have larger aggregate government expenditures as well as deficits than single-party governments. Parliamentary governments tend to spend more than presidential governments.

Whether electoral systems directly affect the behavior of representatives elected under them, however, is only indirectly indicated by these broad aggregate measures. In chapter 4, Thomas Stratmann investigates whether the manner in which representatives are elected has significant effects on their behavior in office. Within mixed-member systems, some representatives are elected from single-member districts and others are elected from party lists as within ordinary PR systems. Using data from the German mixed-member system, Stratman's estimates suggest that electoral systems have observable effects on member behavior. Members elected from single districts are less inclined to vote along party lines and more inclined to serve on committees making targeted grants to local governments than are members elected under PR rules.

The Structure of the Legislature

Public policy is only partly determined by the identity and interests of those elected to office. The formal and informal process of intragovernmental decisionmaking matters as well, because those procedures largely determine the relative influence of offices and office holders as in the case of presidential

compared with parliamentary systems. Part two of the book explores the effects of legislative structure on political equilibrium and policy choices. Does it matter whether a parliamentary government requires majority support to form and whether it is subject to votes of confidence once formed? Does it matter whether the legislature is composed of one chamber or two, and, if so, why?

In chapter 5, Daniel Diermeier, Hülya Eraslan, and Antonio Merlo survey recent work on the effects of constitutional “micro” rules on coalition governments in parliamentary democracies. Specifically, they analyze how the rules for forming and breaking governments within parliamentary systems affect the composition and durability of government. Using a game theoretic model of a “formateur” interacting with coalition members, they demonstrate that coalition governments are not necessarily less stable than those formed by single parties, because stability can be achieved by creating larger majorities. A tradeoff, consequently, exists among the size of the majority, the stability of the government, and the control exercised by dominant parties. These tradeoffs are affected by a number of features of the process by which governments are formed and broken: the electoral cycle, bicameralism, and the stochastic political environment in which governments operate. Tests of these theoretical relationships, unfortunately, cannot be conducted using “off-the-shelf” statistical methods. Using estimators developed directly from their stochastic political models on cross-section data (nine European countries during 42 years), they find that the most stable parliamentary systems have constitutionally fixed electoral cycles and require the ongoing support of a majority of the legislature with new governments being formed immediately after a vote of no confidence.

The stability and composition of public policies are also affected by the structure of legislatures. In chapter 6, Roger Congleton surveys the small literature on bicameralism and uses simulated elections to explore how election cycles affect policy choices in bicameral and unicameral systems. Bicameralism is theoretically expected to lead to more stable policies, reflecting broader interests

and more carefully considered proposals. These predictions are based on the assumption that the chambers represent somewhat different interests; however, the simulations reveal that bicameralism can reduce political agency problems and increase stability, even if the chambers are elected in the same way. Policies adopted by bicameral systems are less affected by electoral cycles and partisan politics than are unicameral systems, insofar as bargaining between the chambers reduces policy variation induced by external random factors. This effect is evident in the experience of Denmark and Sweden, which switched from bicameral to unicameral parliaments in 1953 and 1970 respectively. Using post-war time series data from Denmark (1930–76) and Sweden (1960–97), Congleton finds that their respective time series of government expenditures are significantly less volatile in the period of bicameralism than in their periods of unicameralism.

In chapter 7, Mark Crain and Charles Bradbury provide additional evidence that bicameral legislatures affect public policies. Drawing on the work of Money and Tsebelius (1997), they argue that the effects of bicameralism tend to be larger in cases in which the interests represented in the two chambers are substantially different. Using both international and U.S. pooled cross-section data sets, they find that bicameralism has a larger effect on public policies when the groups represented in the two chambers differ and that bicameralism reduces the “fiscal commons problem,” that is, the fact that governmental expenditures tend to rise with size of its legislature.

Federalism and Decentralization

Another significant structural variation among democracies is the extent to which policymaking power is centralized within a unified national government or is distributed among the central, regional, and local governments. Part three explores the effects of decentralization on government policymaking. The literature on fiscal federalism is the largest and one of the oldest of the

rational choice literatures on constitutional design. An extensive theoretical and empirical literature has analyzed the extent to which competition among local governments encourages the efficient provision of government services or discourages it.

In chapter 8, Dennis Mueller summarizes the normative case for federalism and reviews empirical studies of the effects of decentralization within federal systems. Decentralized and centralized forms of federalism may both potentially have advantages. The normative case for decentralization is that competition among local governments efficiently elicits information about voter preferences and reduces political agency problems. The normative case for centralization is that local determinations of public services ignore effects on individuals living outside the local jurisdiction, which may generate externality problems that are difficult to correct within decentralized systems. Whether decentralization, on balance, effectively promotes citizen interests is, consequently, an empirical question. The empirical literature on fiscal federalism generally finds that relatively decentralized governments are more effective at meeting citizen demands than are more centralized governments. The evidence on intergovernmental grants (the “flypaper effect” literature) suggests that central grants do “stick” to the targeted areas of local expenditures, which allows a central government to address fiscal equity concerns and encourage local governments to solve externality problems that might otherwise be neglected. In general, however, efficiency requires that spending and financing decisions be made at the same level. Central grants may also encourage excessive spending at the local level by creating “common pool problems.” Mueller also reviews evidence that the efficiency-increasing effect of federalism is larger in systems in which local governments are more responsive to local demands, as in jurisdictions where referenda are used for key policy decisions.

Of course, not only local governments are affected by decentralization. In chapter 9, Brian Knight analyzes how central government policies may be

affected by local government interests in cases in which representatives are elected from regional or local districts. Common pool problems exist when local governments (and local voters) do not pay the full price for centrally provided local services. In this case, locally elected representatives may take account of their constituent's local tax prices and local service levels when voting for central government grant programs to state and local governments. If representatives elected to the central government actually represent local rather than national interests, they will favor local over national programs at the margin and overrepresented seats will obtain relatively greater resources from the central government. Knight provides evidence that this is the case within the United States and, furthermore, that disproportionality in the seats in the American legislature favors small states over larger states.

Judicial Independence and the Rule of Law

Besides political decisionmaking procedures, constitutions include a variety of other institutions and political constraints that affect the range of public policies that can be adopted. For examples, most modern democracies have a bill of rights that rules out various kinds of policies (arbitrary arrest, discrimination, censorship, and so on), while mandating others (national defense, education, and social insurance). Other legislative constraints are implicit in a nation's civil law and judicial system, and in the long-term nature of the policies themselves. Part four explores the effects of judicial independence and the rule of law on public policy and prosperity. Does judicial independence within a democracy affect public policy? Can depoliticizing some areas of law encourage prosperity in well-functioning democracies?

In chapter 10, Stefan Voigt and Lars Feld survey the literature on judicial independence, which suggests that judicial independence can have positive effects on economic development by depoliticizing the implementation of public policy and law enforcement. Uniform enforcement of the civil, criminal, and

regulatory law tends to reduce economic and political risks, as well as private transaction costs, which tends to increase investment rates and specialization. Judicial independence, however, cannot be readily deduced from a nation's formal constitutional documents, because the formal relationships between the government and court system allow a variety of fiscal and political pressures to be placed on the judiciary and because not all governments follow the rules of their constitutional documents. Voigt and Feld create indices of de jure and de facto judicial independence for the highest courts of appeal in 80 countries and assemble other economic, political, and cultural data for those countries for 1980–98. Adjusting for country differences, their estimates indicate that de facto, rather than de jure, judicial independence increases economic growth rates.

Overall, the effects of a nation's system of public and private law define a nation's economic constitution—the rules under which private economic decisions are made. In chapter 11, Randall Holcombe, Robert Lawson, and James Gwartney survey empirical work on the effects of a nation's civil and regulatory legal system on national growth rates, giving particular attention to studies that include indices of economic freedom. The results of that research program suggest that the worldwide variation in economic prosperity is substantially explained by institutions and laws that reduce uncertainty and transaction costs. Previous index-based research has examined the effects of economic policy and institutions on economic performance for more than a hundred countries. Their new research determines whether those results hold for a smaller subset of developed countries when focusing more narrowly on public policies with a quasi-constitutional status. Using data from 18 OECD countries, their new results indicate that economic growth rates are higher in countries with constitutional provisions and durable public policies that support market transactions (or at least do not discourage them). They conclude that even generally well-performing economic systems can benefit from reform of their economic constitutions.

Constitutional Dynamics and Stability

Part five explores some dynamic issues in constitutional design that have not received much attention in the rational choice literature. Constitutions are not chiselled in stone, but are amended from time to time. Written constitutions may be revised using formal procedures specified in constitutional documents, and the unwritten parts of constitutions may be revised as informal rules and ordinary legislation change through time. How important are these amendment processes? What characteristics do stable constitutions have? Is constitutional stability a consequence of properly designed amendment processes or of other constraints that limit the domain of public policy?

In chapter 12, Bjørn Rasch and Roger Congleton survey the relatively small literature on constitutional amendment procedures. A wide variety of formal amendment procedures are used by democratic countries. These vary from relatively easy majoritarian procedures, as in Sweden and the United Kingdom, to relatively more demanding and inclusive procedures, as in Denmark and the United States. Evidence from the OECD countries suggests that the stability of a nation's formal constitution increases as the number of veto points in the amendment process increases. The link between the stringency of amendment procedures and overall constitutional stability, however, is not clear. This is, in part, because not all constitutional reforms are equally important, and, consequently, simply counting the number of reforms provides only a rough measure of the extent to which fundamental political procedures and constraints change through time. It is also because constitutions can be reformed informally as well as formally, and informal changes are difficult to discern and quantify. For example, the hard-to-amend U.S. constitution has changed considerably with time as a result of judicial interpretation rather than formal amendments.

Moreover, informal agreements can be very important determinants of a nation's constitutional stability although they are often unappreciated in constitutional research. In chapter 13, Barry Weingast analyzes how a self-

enforcing constitution can fail when the “stakes” of public policy suddenly increase. Using examples from American and Spanish constitutional history, he argues that constitutional stability depends partly on informal pacts among political elites. Both formal and informal pacts among elites are more likely to stand the test of time when they remove particularly threatening policies from the domain of constitutionally permitted legislation. Such informal rules as well as the formal “takings” clauses of modern constitutions increase political stability by keeping the political stakes relatively low, which tends to reduce the extent and intensity of distributive conflicts.

VII. Conclusion: Democratic Constitutional Design Affects Public Policy

The rational choice literature on constitutional design is very much a work in progress, and recent publication rates suggest that much remains to be analyzed and tested. The rapidly accumulating research, however, has already made substantial additions to their rational-choice precursors and to longstanding historical and legal research on democratic constitutional design. This book provides an overview of its main findings.

Overall, the results suggest that subtle variations in democratic constitutional design can have systematic and quantifiable effects on national politics, public policies, and long-term national prosperity. For example:

- Electoral systems affect public policy both directly and indirectly. Political representatives tend to be more accountable to the electorate under plurality voting than under proportional representation.
- Government spending patterns differ under PR and plurality systems.
- Politics with proportional representation tend to have larger government sectors and larger budget deficits than those with first-past-the-post systems.
- This is evidently caused, at least in part, by the prevalence of coalition governments under proportional representation.
- The size and stability of a coalition government is affected by a number of “micro” rules determining government formation.
- Bicameral systems tend to have more predictable public policies that are somewhat less susceptible to the fiscal commons problem.

- Federal systems tend to be more responsive to variations in local demands. They can also enhance efficiency through institutional competition among local governments. On the other hand, they may contribute to fiscal commons problems at the national level.
- Polities tend to be more prosperous if civil law is depoliticized and protected via an independent judiciary.

Another important finding, which runs through many of the contributions in this volume, is that representative systems of governance are subject to a variety of political agency problems. Elected representatives do not always represent the shared interests of their electorate. These problems can be reduced through several institutional features, although a tradeoff often exists between benefits and drawbacks of particular institutions. Institutions that can reduce political agency problems include:

- Direct democracy
- Divided government
- Decentralization (fiscal federalism)
- An independent judiciary.

In addition, democratic governments tend to be more stable if major conflicts about political decisions are avoided, whether formally in constitutional documents or with informal agreements among political elites. But stability also depends, as noted, on a number of micro rules determining government formation and dissolution, and on the formal and informal procedures of amendment.

Of course, the conclusion that political institutions matter has long been present in comparative political research, and it has also long been implied by the rational choice to analyses of constitutional design. In this respect, the new empirical research provides additional support for the longstanding strands of legal and historical research that accords significance to a nation's institutions.

Agreement, of course, is not the same as redundancy. That scholars from different academic backgrounds independently reach largely similar conclusions suggests that the effects of constitutions are real rather than imagined. The new work differs from the old, moreover, in its attempt to understand the effects of political institutions as products of self-interested behavior by rational individuals rather than broad historical and cultural trends, or of the personalities of the particular persons who rise to positions of power. It attempts to model political relationships analytically and quantify the effects of those relationships using new and increasingly powerful statistical tools and extensive data sets. The new research, consequently, provides increasingly rigorous models of the processes by which institutions affect political outcomes and stronger quantitative evidence of the magnitude of those effects, which sheds new light on the tradeoffs involved in constitutional design.

Moreover, not all modern work in the economic, legal, and historical traditions attributes much importance to political institutions or constitutional documents. A good deal of economic analysis continues to ignore the importance of political institutions on public policies and thereby on prosperity. And, many national histories have been written that devote very few pages to constitutional and institutional developments. The research surveyed in the present volume implies that such economic and historical accounts underestimate the importance of durable political institutions and changes to them.

More important than its contribution to the academic literature, the work summarized in this book sheds new light on the effects of alternative democratic design on public policies and economic development. Democratic constitutions often change through time although they may remain democratic, as has been evident throughout Europe in the twentieth century. It is also evident from the work summarized in this chapter and articulated at length in the chapters below that not all such reforms are improvements or mere symbols of their times. Neither constitutional history nor political economy stops when a nation

becomes “democratic,” because the particular details of democratic constitutional design matter!

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