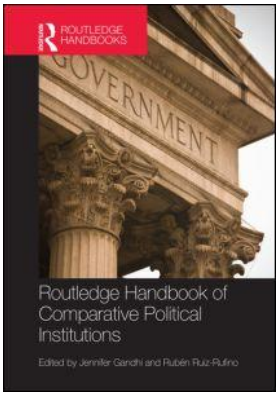

Routledge Handbook of Comparative Political Institutions

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Constitutions as political institutions

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CONSTITUTIONS AS POLITICAL INSTITUTIONS

Tom Ginsburg[1]

Constitutions are the primary institutions for organizing and regulating political systems, and therefore crucial subjects for comparative political analysis. Indeed, because constitutions provide the rules about the making of rules (Buchanan and Tullock 1962), they might be productively characterized as meta-institutions, and have been of interest to scholars since Aristotle. In recent decades, institutionalist scholars have gone a long way toward articulating functional theories of constitutions and have also paid attention to the determinants of form through studies of diffusion and borrowing. But there is still much work to be done in testing theory, and in delving into complex questions of institutional complementarity. Although there are significant methodological and data challenges for the research program in comparative constitutional studies, there is great promise for the future.

At the outset, it is worth distinguishing between constitutions, which are institutions, and constitutionalism, which is a normative ideal that government should be limited by law. Not all functions or features of constitutions necessarily advance the ideals of constitutionalism. This ties into another central distinction in the study of constitutions, between "large-C" Constitutions and "small-c" constitutional rules. The former are formal documents that have become part of the script of the nation-state (Meyer *et al.* 1997), while the latter consist of other formal and informal institutions and rules that play a constitutional function, however defined. These might include judicial decisions interpreting a constitutional text, statutes that are so entrenched that they are unlikely to ever be overturned (sometimes called "super-statutes"), and informal norms and conventions that define and constrain the exercise of power. The primary focus in this essay is on large-C constitutions, as the small-c variant might be argued to encompass virtually every institution discussed in this volume.

There are many ways to study constitutions from either perspective. Lawyers tend to focus exclusively on those rules that are legally binding, and to trace various modes of constitutional interpretation by courts. Some political scientists and comparative law scholars prefer to emphasize the role of constitutions as defining and producing identity (Jacobsohn 2010; Rosenfeld 2009) or their "poetic" role in appealing to emotion (Sajo 2010). The institutionalist tradition in political science and economics, in contrast, tends to draw on rational choice methodologies to understand the functions of constitutions for the political and economic systems.

The institutionalist tradition draws from older work in public choice and constitutional political economy, which focuses on the higher order rules that shape behavior. Political constitutions of nation-states are only one example of "constitutional" rules and institutions, but are particularly important because of their structure as the highest set of legal norms that structure political systems. The basic assumption is that different constitutional schemes can have different incentive effects on political life, the production of public goods, and the function of the economy. This research program has incorporated contributions from many different disciplines, and has both a positive component as well as a normative one in which the concern is optimal institutional design (see, e.g., Cooter 2000; Voigt 1997; Riker 1964; Persson and Tabellini 2003; Van den Hauwe 2000).

This chapter begins by reviewing the functions of national constitutions from an institutional perspective. It then goes on to very briefly survey some of what we know about constitutional drafting, constitutional endurance and change, and the efficacy of constitutions. The last part of the chapter identifies challenges and provides suggestions for future research directions.

Constitutions as coordination

All regimes need institutions, and need to coordinate which institutions will play what roles in different situations that arise downstream. Laying out the structures of government facilitates the operation of institutions because it prevents continuous renegotiation. A written constitutional text can minimize conflict over basic institutions for any regime (Carey 2000), including authoritarian ones (Barros 2002). Furthermore, constitutions can set up certain institutions, such as constitutional courts, to play a role in resolving *future* disputes about power. In this way, constitutions are important tools for the functioning of governments.

Constitutions are also useful for constraining the very government that they empower. Constitutionalism is the idea that government ought to be limited, and so citizens are protected in terms of their core interests by a "social contract." While citizens may have strong shared intuitions about the limits on government power, they may not have precise intersubjective agreement on the precise definitions of what counts as an abuse, or on procedures for identifying violations. A formal constitution can help to generate this intersubjective understanding (Weingast 1997). In this model, citizen demands and expectations do the bulk of the work in limiting government behavior; but the addition of a written constitution increases the probability that this deep force will indeed be brought to bear by the citizens when government violates the terms of the social contract.

A related constitutional function is that of intertemporal commitment (North and Weingast 1989; Sunstein 2000). Rulers can make promises, but why should their subjects believe them? Embedding a promise into a constitution, which is typically more difficult to change than ordinary law, can raise the costs of reversal, in turn making regime promises more credible.

Several scholars have argued that successful constitutions ought to reduce the stakes of politics (Przeworski 1991; Weingast 1997; Sunstein 2000). By providing for rights, constitutions maximize consent over issues of great importance to individuals. This limits the harm that can be imposed through political processes, which has the added virtue of directing political energy from insoluble problems (for example, which is the best religion?) to solvable ones (how much money should we spend on the military vs. building roads?) (Sunstein 2000). Among other benefits, politics involving lower stakes will result in reduced expenditures by groups to capture government processes.

Constitutions may also facilitate control of lower-level agents. All regimes need to gather information on the activities of their own employees, and occasionally to punish them as well.

Constitutions can provide incentive structures for principals (monarchs, the general public, or heads of government) to be able to monitor their agents. One device is to encourage others to complain about agent misbehavior, as in the "fire alarm" model of legal controls (McNollGast 1987). Constitutions have long featured such institutional design. As Jean Bodin (1576) noted, the French king granted immunity to members of parliament in order to encourage them to bring complaints against provincial agents of the king. This helped the king to learn about agent misbehavior, making monarchical governance more effective.

The history of constitutionalism reflects this combination of credible commitments and agency control. In his study of the origins of the state, Roger Myerson (2008) provides a model in which an autocrat creates a court of notables with the ability to remove him from power. "Without such an institutionalized check on the leader," Myerson writes, "he could not credibly raise the support he needs to compete for power" (2008: 130). To ensure that his agents do not cheat or rebel against him, the prince must credibly assure all agents that he will act fairly. A promise to have a public trial of an agent before any punishment, observed by the other agents, ensures that the prince will act fairly; otherwise the other agents will be able to coordinate and overthrow him. Applying this perspective to the early history of the Court of the Exchequer in England, Myerson shows how common knowledge and the constitutional commitment by the king to punish only those agents whose malfeasance has been publicly verified help to make government more effective. This simple constitutional setup solves both the agency problem and the commitment problem on the part of the monarch.

Problems of coordination, commitment, agency control, and the generation of information for governance are general problems of all government institutions. Effective constitutions can help solve each of these institutional problems. What, however, ensures that the constitutions will actually be effectively enforced, even if in the interests of all? After all, a powerful ruler can always overturn the rules or rewrite them to his advantage. Entrenchment plays a crucial role in ensuring efficacy, but entrenchment is not foolproof. Rather, it merely raises the price that a dominant coalition must incur before changing the rules.

The theory of self-enforcing institutions, which has been very influential in recent years, helps to resolve this puzzle (Ordeshook 1992; Weingast 1997). The central problem to which self-enforcement theory is addressed is that, as the highest institution in a political system, there is no external enforcer of the constitutional bargain. Any enforcer is itself part of the governance structure. For example, while constitutional courts can help parties coordinate their understandings of constitutional norms in cases of ambiguity, they lack the proverbial power of the purse or sword, and so must depend on other actors to enforce their rulings.

The answer to the puzzle is that sustainable institutions must be self-enforcing, in which powerful players exercise mutual vetoes on constitutional change. They are equilibrium phenomena. Weingast (2006) provides an extended analysis of the first century of the American constitution, in which the formal constitutional bargain between North and South was supplemented with a series of pacts ultimately embodied in the Missouri compromise, in which each new free state was accompanied by a slave state to preserve sectional balance. As the population of the country moved westward to regions in which slavery was not as feasible, the bargain became obsolescent, leading eventually to the civil war. The constitutional bargain was preserved for a century, however, by coordinating understandings and expectations among political antagonists.

Institutional theory has provided profound insights into the political functions of constitutionalism, and helps us understand positive and normative acquiescence to some constitutional provisions. However, these functional accounts are not particularly useful for generating predictions about the circumstances under which actual constitutions will be formed and endure.

After all, many countries are unable to produce effective constitutions, even if doing so would deliver profound benefits. A successful coordinating device is simply recognizable by the presence of a constitution in force that is generally accepted; but we do not have anything within game theory that provides insight into what the equilibrium will be. To understand that, we must turn to the actual circumstances of constitutional drafting, on which there is relatively little known in a systematic way.

Drafting

Studies of constitutional drafting tend to consist of descriptive case studies, but the method of the analytic narrative (Bates *et al.* 1998) can be helpful in helping to uncover the institutional logic. Such narratives can allow us to specify interests, trace negotiations, and understand the possible Pareto-superior outcomes. Theories of contracting drawn from law and economics are also helpful in this context. While social contract theories have come under attack from various quarters as a normative account of constitutionalism, contractarian theories help us understand how constitutions are formed and operate—as a subject of positivist enquiry.

A key variable in shaping the constitutional negotiation is the organization of the production process of the constitution itself (Tushnet 2013; Widner 2008). This in turn may be determined by a prior constitution or set of norms, by a peace treaty among warring factions, or simply by pragmatic accommodation among powerful players. Institutional features of the process are likely to have some impact on the ability to reach an agreement and on the nature of the resulting process. For example, Elster (1995) claims that more transparent processes can lead to more arguing than bargaining, in which parties spend time and energy on posturing before their respective principles. Many constitutions are produced as elite pacts by a small number of groups or factions. Others are more open, and there is a strong normative trend in recent years toward encouraging broad participation of the public in constitution-making (Arato 2012), though the empirical literature is mixed on whether participation is necessary or sufficient for effective constitutional design (Horowitz 2013; Ginsburg *et al.* 2009). Elster argues for an "hourglass" approach to transparency, with wide participation at the beginning of the process and to approve the final product, but a relatively closed middle, in which interests can be worked out. But there is still relatively little empirical examination of these conjectures (for a summary, see Ginsburg *et al.* 2009).

Time is another variable. Some processes are rushed, while others are more leisurely, depending on the external circumstances in effect. Time constraints might pressure parties to leave more things unspecified if they run out of time to write things down; at the same time, they can reduce the possibility of strategic behavior in the negotiation process. If time for drafting were unlimited, parties might never sit down to sort out the hard issues. Another crucial factor is the diversity of parties to the constitutional negotiation process.

In an important recent study of constitutional change in Latin America from 1900 to 2008, Negretto (2013) differentiates between the common interests of constitution-makers in coming to an agreement to capture collective benefits from the distributive conflict within a particular constitutional scheme. He argues that general guidelines for reform are determined by responses to actual governance problems, but power comes into play in the choice of specific institutions at moments of reform.

One area for further systematic investigation is the role of outsiders. Notwithstanding the assumptions of self-enforcement in institutional theory, in many design situations there are external actors heavily involved in the drafting and negotiation process. An extreme example is the Constitution of Bosnia-Herzegovina, attached to the Dayton Accords ending the Bosnian

war. This document forms a classic example of a consociational bargain (McCrudden and O'Leary 2013), but it is one in which external monitors are embedded in the constitutional order. For example, three members of the constitutional court are appointed by the President of the European Court of Human Rights and a High Representative of the international contact group helps to resolve the frequent impasses in Bosnia's collective presidency. Kenya's Constitution of 2009 was produced by a drafting commission that included three members from other African countries. And the historical example of Japan's Constitution, produced in first draft by the American occupation authorities, suggests that constitutions can indeed survive and prosper despite foreign influence.

As an aside, and in contrast with the theory of self-enforcing institutions, external involvement in the production of constitutions suggests that external actors may also have an interest in *enforcing* the constitution. Elkins *et al.* (2008) discuss the role of external actors in bounding the terms of constitutional debate in Japan, and the more general role of external enforcement in constitutions drafted under occupation. More broadly, one might think of external actors as being actual parties to constitutional production processes, with their own interests and constituencies—the United Nations has played this role in several post-conflict societies.

Contents

Constitutions are drafted by experts, government officials, and lawyers acting on behalf of the negotiating groups. In many cases, rather than draft the document from scratch, they will look for a model, or several models, to see how the document is organized and what subjects it covers (Choudhry 2007). I call these boilerplate provisions of constitutions (Ginsburg 2010; see also Law 2005 describing "generic" constitutional law). Empirical work has identified a good deal of constitutional copying. Law and Versteeg (2011) have identified the contents of global templates of rights provisions in constitutions. Elkins (2010) traces relative similarity among constitutional documents in Europe. Elkins *et al.* (2013) have shown the influence of international treaties on constitutional rights provisions. In short, the content of constitutions may, like some contracts, have a form-like quality. Provisions migrate from document to document, sometimes with only minor amounts of local tailoring.

Boilerplate provisions have the advantage of saving on transaction costs of negotiation. Furthermore, in the constitutional context, the usual objections to "boilerplate" in contracts between buyers and sellers—namely that they involve a power imbalance in favor of drafters—are less salient (Ben-Shahar 2007). On the other hand, in the constitutional context there are few of the mechanisms of market discipline that some believe restrain the use of "inefficient" boilerplates in the contractual setting (Ben-Shahar and White 2007). We cannot be confident that the phrases that are being borrowed are in fact the best provisions.

If one believes that constitutional provisions have been adopted by other countries based on an independent assessment of their benefits, borrowing can represent a form of social learning, by which states learn from others' experience (Posner and Sunstein 2006). Further, some provisions of a constitution may be directed externally, such as rights provisions that are designed to act as signals to international audiences (Farber 2002). It might make sense for drafters to use conventional forms of rights language to achieve this signaling purpose. On the other hand, boilerplate can lead to adoption of provisions without much local meaning. If there is less local understanding of what the provisions entail, there is less likelihood of effective enforcement in practice (Weingast 1997).

One consequence of the boilerplate quality of constitutions is that the subjects included in them are partly a result of conventions or trends. Many of the things commonly included in

constitutional texts, such as provisions about flags or national mottos, are hardly of such significance that they need to be enshrined in the highest law of the land. On the other hand, there may be certain things that are not included in most constitutions which perhaps ought to be. For example, few constitutions mention the administrative state, even though it is the central feature of modern government. The details of the electoral system are often left out, even though this means there is a danger of self-dealing by those in control of the legislative process.

In our work on the Comparative Constitutions Project, Elkins, Melton, and I identify certain core provisions to written constitutions, defined as those found in a vast majority of constitutional texts. For example, nearly every constitution provides for its own amendment, includes some rights, and establishes a mechanism to select the head of government. Conversely, other provisions are more peripheral, and might be thought of as options. Constitutions are also subject to trends over time. In the nineteenth century, for example, few constitutions mentioned political parties, while most written in the twentieth century do so. Conversely, bankruptcy was a popular topic in the nineteenth century but is now less likely to be contained in constitutions.

Our general view is that time and space are important determinants of content. But we do not know much empirically about the relationship between the production process of constitutions and their contents, or their effective enforcement. Normative theory has preceded positive theory, which in turn has preceded systematic empirical testing. (We will return to this issue in the section on "Future challenges," pp. 108–110.)

Endurance and change

Constitutions, while intended to endure, do not typically do so (Elkins *et al.* 2009). Enduring constitutions require enforcement, either by self-enforcing mechanisms or by international actors, and will endure so long as relevant parties believe they are better off within the bargain than in risking new constitutional negotiations.

The equilibrium concept of constitution is not a normative theory. It says nothing about the quality of the document as being public-regarding or dominated by private interest. But it suggests a quality that will be as necessary for either type of constitution to endure, namely that a coalition of interest groups must support the constitution's continuing efficacy.

The initial constitutional bargain will of necessity be "incomplete," in that the parties will be unable to specify every future contingency. Because of transaction costs to negotiation, parties that seek to specify every contingency will never conclude a deal. This means that the bargain will be subject to unanticipated "shocks" that occur downstream. Just as parties to a contract may find, for example, that prices of supplies increase, forcing a renegotiation of the deal, constitutional bargainers may need to adjust their bargain down the road if anticipated benefits do not materialize. This might involve constitutional amendment, or even a replacement of the constitution with a new one.

The contract theory notion of efficient breach suggests that parties in some circumstances can and should violate their prior agreements when it is efficient to do so. By analogy, for every period after the initial negotiation the parties to a constitution have to make a decision as to whether to remain in the current bargain or to renegotiate. Sometimes pressure for renegotiation may result from the revelation of information that was strategically hidden during initial negotiations. Sometimes pressure can result from an external shock that changes costs and benefits over time, leading parties to want to renegotiate the deal. And sometimes the costs and benefits may simply shift because of internal changes, reflecting the rise of a minority group or newly emerging social force seeking to enhance its position.

Amendment procedures are thus crucial for constitutional survival, and there has been interesting work on the thorny problem of measuring amendment difficulty cross-nationally (Lutz 1995; Lorenz 2005; Rasch and Congleton 2006; Ferejohn 1997). The question presents complex methodological problems of incommensurability and endogeneity. To illustrate, do we really know whether an amendment scheme that requires, say, a two-thirds majority of the legislature and a signature of the president is more rigid than one that requires only a legislative majority in two successive legislatures? The variety of different schemes is great, and it is difficult to compare institutional setups directly.

Most approaches that try to solve this problem draw on the observed rate of amendment difficulty to evaluate the relative rigidity of different institutional setups. But here endogeneity raises its ugly head. The observed rate of amendment difficulty may be a product of the same factors that shape the design of the amendment rule. Because we do not know what leads some drafters to adopt a low amendment threshold and others to adopt a high threshold, it is difficult to draw conclusions about the effects of different rules on the rate of constitutional amendment.

A further difficulty is that many constitutions have different decision rules across different issues. Just as constitutional rules are typically entrenched relative to normal legislation, so too some constitutional rules may be more entrenched than others. For example, in the United States Constitution, Article V provides that no state may be deprived of equal representation in the Senate without its agreement. This provision sets the decision threshold as unanimity, entrenching the representative scheme in the Senate far more strongly than the representative scheme in the House. India's Constitution is another example of a complex scheme, as some issues require an absolute majority and others higher majorities. Frequent amendments themselves modify the parts of the constitution subject to the different amendment formulae.

Besides formal amendment, constitutional review is another mechanism for constitutional change, and one that has received a good deal of scholarly attention. Scholars have theorized the institutional rationale for the adoption of constitutional review and its timing (Hirschl 2004; Ginsburg 2003). And an increasingly rich empirical literature is enhancing our awareness of the various functions of constitutional review. It is a particularly important constitutional institution, but there are, of course, many others that have been subjected to institutional analysis.

In terms of the effect of content on constitutional endurance, Elkins *et al.* (2009) find that a relatively flexible amendment scheme is important (notwithstanding the challenges of measurement identified above). We also show that constitutions that are more specific tend to last longer. But there is much more work to be done in this area.

Efficacy and variation

The question of when and how constitutions "work" is a very important one, and first requires nuanced specification of the target of inquiry (Breslin 2009). Constitutional efficacy probably depends on the specific rule in question. For example, one might distinguish rights provisions from those rules that set up government institutions. Institutional provisions, in theory, seem to be better candidates for self-enforcement than are rights provisions, which tend to distribute moral claims.

While major research programs in comparative politics have addressed issues like federalism, the relative merits of presidentialism and parliamentarism, and the role of small-c constitutional design in managing divided societies, little of this work has actually focused on the inclusion of the relevant rules in the formal large-C constitution. Evaluating the consequences of political institutions is a slightly different research question than is evaluating the efficacy of formal constitutionalization in producing those consequences.

With regard to rights, on the other hand, a small cottage industry has grown up trying to examine the role of formal constitutions in human rights protection (Camp Keith 2002; Cross 1999; Davenport 1996). Some of these efforts study multiple rights; others focus on a single one (Cross 1999). The basic theory is that including rights in a constitutional text facilitates enforcement activity by private actors and other government officials. The evidence here seems to be mixed. Linda Camp Keith (2002) compares the provision of rights, both substantive and procedural, and actual human rights protection, and finds that provisions for judicial independence improve human rights protection, as do due process provisions such as guarantees of public and fair trials. These process rights seem to be more important than the presence or absence of the substantive provisions themselves. Frank Cross (1999) finds that judicial independence is correlated with the presence of political rights and protection against unreasonable searches and seizures. Christian Davenport's (1996) more comprehensive analysis covers 39 countries over a thirty-year period and distinguishes de jure provisions on rights, limitations on rights, state of emergency clauses, and limitations thereof. Davenport finds that countries with a state of emergency clause have lower levels of repression, and that the freedom of the press is a crucial variable for reducing repression. Recently, Camp Keith, Tate, and Poe (2009) confirmed many of the findings from earlier studies using a longer time period and larger sample of countries, and Law and Versteeg (2013) have developed a test of constitutional rights.

An important recent line of work on constitutional efficacy follows the trend in comparative politics toward studying authoritarian regimes (Levitsky and Way 2010; Svolik 2012; Schedler 2006; Gandhi 2010). While these have been traditionally viewed as "shams" (Murphy 2006; Law and Versteeg 2013), we are now learning more about their functions. Ginsburg and Simpser (2014) identify a series of functions that can and are played by constitutions in authoritarian regimes, drawing on both institutional analysis and other work. They argue that many of these functions are similar to those played by constitutions in democracies. For example, some authoritarians may use constitutions as precommitment devices; others may seek to use them to control lower-level bureaucratic agents. Authoritarians also need to coordinate among themselves by establishing political institutions, and elicit cooperation from subjects. For all these functions, texts can play helpful roles.

Ginsburg and Simpser summarize these roles by characterizing constitutional provisions as *operating manuals*, *billboards*, *blueprints*, and *window dressing*. An operating manual simply describes government institutions, allowing for coordination. A billboard is an advertisement, designed to signal the intentions or policies of a regime. Blueprints are plans for the future. For example, military authoritarians may produce a constitution in the aftermath of a coup to set a timeline for a return to civilian rule, and the terms under which such a return may take place. Announcing such a project will raise the costs of violating the text of the constitution, and may also facilitate a period of "legitimate" authoritarian rule. And sometimes constitutions are window dressing, designed to obfuscate. This is akin to the traditional view of constitutions as shams.

Conclusion: future challenges and directions

The institutional research program on constitutions has gone a long way toward enhancing our understanding of why constitutions should matter for comparative politics. The general thrust of this literature has been to explain how the constraints provided by constitutions are empowering for rulers and ruled alike. Yet, how these functions map onto real-world constitutional design is not always completely clear. There is no doubt that the institutionalist functions do not exhaust those that are attributed to constitutions, nor do they go far in explaining form, which varies quite dramatically across time and space. We tend to assume comparability in the topic of

constitutions across different concepts, but this is not always appropriate (see Elkins *et al.* 2009 for a discussion). Furthermore, institutional theories tend to be of a one-size-fits-all character, and we do not have predictive accounts of the conditions under which particular institutions will be adopted. Here, diffusion studies focusing on emulation have been useful, at least for establishing the broad variation.

The research program evaluating the actual effects of constitutions is in its infancy, and faces some of the methodological challenges common to other fields of comparative politics. Individual case studies have been very important but large-N work has been somewhat hindered. General problems of causal inference are severe in a context in which multiple factors interact with environmental conditions in a relatively small number of real-world settings. Endogeneity is unavoidable. As Law (2010: 388) puts it, "Large-C constitutions may be intended to structure political, social and economic arrangements, but they are also the products of the very arrangements they are supposed to shape." Another problem with ordinary statistical models is heterogeneity in the effectiveness of institutions depending on particular conditions, and standard cross-sectional time series approaches may not pick up the appropriate variance.

However, some new data sources may facilitate further testing. The Comparative Constitutions Project tracks the formal features of constitutions of independent states since 1789. Versteeg has a dataset on rights provisions in formal constitutions of states after World War II (Versteeg and Goderis 2008). The CompLaw database (Carrubba *et al.* 2012) captures information on constitutional adjudication by the highest courts in 43 countries, with more being added. And there is an increasing array of international survey data that may prove helpful in terms of testing hypotheses (World Justice Project 2014).

Still, empirical problems remain. The new data sources sometimes confront interesting problems of measurement, as our discussion of amendment difficulty suggested. Furthermore, there is not yet comprehensive data on the drafting process of constitutions, and this has somewhat hindered efforts to try to relate the process of constitutional production with the contents or efficacy of the resulting documents. This is an important area in which normative speculations have far outpaced rigorous empirical work.

A major challenge to the institutionalist research program is that it has not gone far in understanding the interaction among different institutions that co-occur. Provisions may be designed and analyzed in isolation; but they operate as part of institutional systems in which the whole is more than the sum of its parts (Vermeule 2011). For example, in examining the effectiveness of particular constitutional rules, for example on emergencies or term limits, scholars have not explored whether the presence of a constitutional court makes a difference in performance. How do the co-presence of multiple institutions interact to produce efficacy? This research program is important, particularly since it has been noted since the beginning of modern constitutional theory. James Madison noted in Federalist 51 that "different governments will control each other, at the same time that each will be controlled by itself." But the particular configurations of different institutions have not received much attention.

New methods may help us understand the interaction of different institutions and context that produces effects. Law (2010) speculates on use of agent-based modeling in computer simulations, and also notes that experimental design may help to advance the research program. And more complicated tools for analyzing texts, such as topic models, might be helpful for us to learn about channels of institutional borrowing.

Constitutions are at the core of the institutionalist research program in political science, and also are institutions for which the real-world stakes could not be higher. An increasingly dense array of international and domestic actors is looking for answers to questions about optimal

institutional design, yet the literature has provided precious few answers. Yet there is hope that the new tools available to scholars and expanded data will help to address these concerns.

Note

1 This work draws on various pieces of joint work with Alberto Simpser, James Melton, and Zachary Elkins. All mistakes are my own.

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