

# CONSTITUTIONS

I. Modern polities place an important emphasis on the formal organization of political institutions: constitutions are an important element of this formal organization of powers. In a permanent document:

- A) they define spheres of authority inside the state apparatus
- B) they define features of the decision process in the public sphere
- C) they define citizens rights and duties
- D) they define the limits between public and private sphere

II. Despite the many functions performed by the constitutional text, one question remains:

Why to empower actors, define government structures, distribute rights and duties in a rigid document?

Does this rigid document have any impact on the political actors behavior?

Wouldn't be better, in the case of democracies, to leave to the majority to decide what to do in each case?

### III. “Rules rather than discretion”

Suppose we have a strong democratic government:  
The same government that can deliver to you the  
political goods you care may overturn them.  
What guarantees can we have against state  
encroachments?

IV. A rigid constitution is written to overcome this problem.

How else to make the protection of property rights, of citizens rights and so on, a stable policy choice of the political system?

By means of a rigid constitution the state actors can credibly commit to policy choices they want to be stable.

V. According to this commitment perspective constitutions are:

Efficiency enhancing mechanisms (commitments) that provide stable rules of social, political and economic interaction.

Constitutions are an antidote against myopic behavior (solutions that seem expedient in the present may hurt the political system's futures capacity):

a sovereign that overspends may have more money in the present but will loose credit in the future.

a majority that doesn't respect minority rights in the present may have less security in the future when it looses the majority status.

1,1	0,0
0,0	0,0

VI. But commitment solutions have also distributive consequences:

Mechanisms to contain sovereign's debt may empower creditors over debtors;  
Self-containing mechanisms for majorities may empower specific minorities with veto or reversal power.

2,1	0,0
0,0	1,2

VII. Political systems vary on how much they formalize in their political constitutions: some constitutional texts are more detailed than others:

USA: 7 articles and 26 amendments

France: 92 articles

India: 395 articles

Brasil: 246 articles

Russia: 137 articles

VIIa. The advantages of vagueness:

Constitutions are written to last but they may reflect past and present concerns and therefore, many articles may be unsuitable to deal with future problems that may appear.

Ex. Germany after the war, Forbidding reelections in the USA

VIII. Political systems may also vary on which policy areas are inserted in the constitutional text:

USA: Judicial Review and Independent Central Bank

Brasil: Judicial Review and Non-Independent Central Bank

France: No Judicial review and Non-Independent Central Bank

Argentina: Judicial Review and Independent Central Bank

IX. Some constitutional charters have social rights charts or even social policy articles, others not:

Spain: work training and social security

Germany: education (totally publicly funded)

Netherlands: welfare and regulations about education

Brasil: an article with 34 paragraphs with detailed social regulation (regulation of health conditions in work, work accident insurance. minimum wage and so on) an entire chapter on social security and another on education;

X. Constitutions empower political actors.

The problem constitution framers face is how to guarantee these political actors will act on the behalf of their legitimate political constituencies.

(the incentive compatibility problem)

For instance, how can we prevent political actors to follow particular interests and stimulate their concern for the general welfare?

How can we prevent them from shirking?

From a distributive and informational perspective, we cannot completely overcome this problem.

Exs: electoral systems

Majoritarian systems > parochialism

Proportional systems > partyism

Improving civil servants performance

Encouraging innovation > increase discretion

Encouraging performance > overpaying

Increasing concentration power > arbitrariness

Fragmenting authority > inefficiency or delaying

XI. How much rigid must the constitution be?

Do present majorities have the right to bind future majorities?

The problem of amending a constitution. How much to entrench and what to entrench?

Constitutions differ in their amending thresholds:

USA: proposed by  $\frac{2}{3}$  of both houses and approved by  $\frac{3}{4}$  of the state legislatures;

Brasil:  $\frac{3}{5}$  of both houses in unicameral session, in 2 rounds;

Germany:  $\frac{2}{3}$  of votes in the lower chamber and  $\frac{2}{3}$  of the votes in the senate

New Zealand: no provision

Spain:  $\frac{3}{5}$  of both houses or  $\frac{2}{3}$  of the lower chamber and absolute majority in the Senate; may be subject to referendum, if requested by one tenth of the members of either chamber.

Poland:  $\frac{3}{5}$  of the lower chamber and absolute majority of the Senate; some matters may be subject to referendum.

XII. Constitutions also differ on the geographical distribution of political power

Unitary and Federal States.

As of 2000: 20 Federal States and 173 Unitary.

Federal States:

USA

Canada

Mexico

Brasil

Argentina

India

Pakistan

Tanzania

Nigeria

United Arab Emirates

Comoros

Malaysia

Australia

Russia

Belgium

Austria

Switzerland

China (?)

Big countries show some tendency to adopt federalist structures.

### XIII. Why decentralize?

A) Solving the externalities problem:

when the provision of political goods generates spillovers is better to centralize;

When the opposite is true, is better to decentralize.

B) Solving commitment problems:

Federalism leads to the fragmentation of power, which reduces the probability of an overpowering sovereign to encroach upon the citizenry rights

Federalism reduces the threat of expropriation and as such, promotes growth.(Weingast,1995)

B) Increasing the probabilities of exit:

In a population with heterogeneous tastes for political goods is better to decentralize;

increases the bargaining of the citizenry versus the state (Mueller, 1996)

#### XIV. Which political goods to decentralize?

A politics matter

Basic Education: France (highly centralized)

England (less centralized)

Higher Education: USA (decentralized)

Brasil (centralized and decentralized)

Industrial Incentives (Tax exemptions, etc): USA

(decentralized)

Brasil, Mexico (before centralized, but recently decentralized)

XV. Does the federal structure matter for the distribution of resources?

Countries	Central Gov. Revenue%	Local Gov. Revenue%
Malaysia	85	15
Brasil	73	27
Australia	67	33
Germany	67	33
India	65	35
Switzerland	59	41
Argentina	58	42
Canada	48	52
USA	58	42
Unitary Systems	-	-
Indonesia	97	3
Iran	94	6
Thailand	94	6
Chile	93	7
Great Britain	92	8
Israel	91	9
Romania	90	10
South Africa	89	11
France	87	13
Zimbabwe	86	14
Spain	84	16
Sweden	69	31
Japan	58	42

Constitutions are incomplete contracts  
Not all contingencies can be foreseen

