

Positive Constitutional Economics: Recent Insights, Possible Trends

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1. Introduction

- For a long time, research in constitutional economics was predominantly theoretical and normative.
- Recently, this has changed: “Positive constitutional economics” emerged
- Research program received big boost from Persson and Tabellini’s (2003) *Economic Effects of Constitutions*
- (Possible) next steps:
 - Endogenize constitutions
 - Move toward a more applied constitutional economics.

Structure of the Talk:

1. Introduction
2. What is “Constitutional Economics”?
3. Economic Effects of Constitutional Law
4. Endogenizing Constitutional Institutions
5. Open Questions - Possible Trends

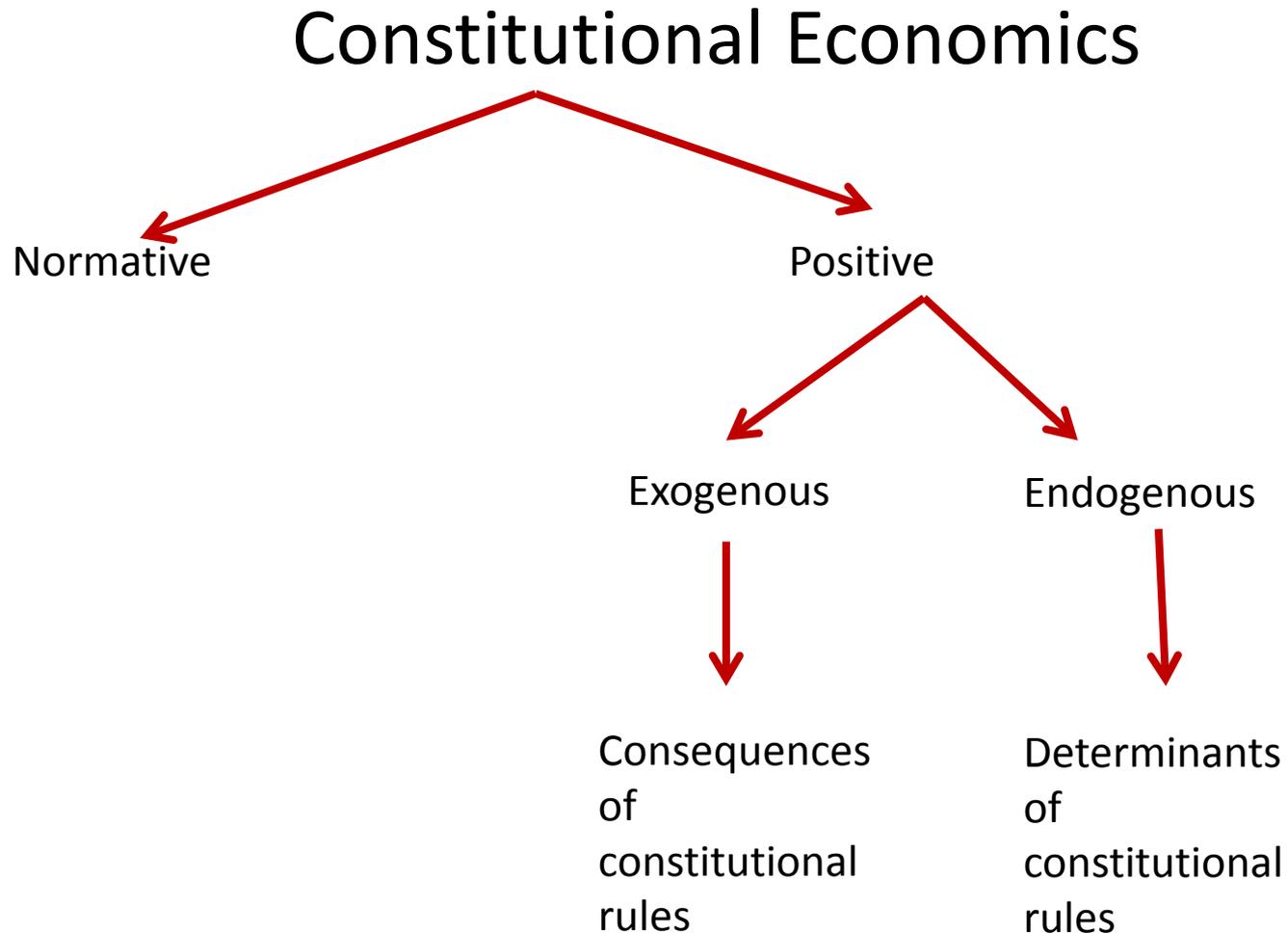
2. What is “Positive Constitutional Economics”?

- Attempt to analyze
 - the consequences of different constitutions *and*
 - the reasons for differences in constitutionsby drawing on “the economic approach.”
- Constitutional Economics can be thought of as belonging to the economic analysis of law
 - “Law & Economics” a development that started ca. 1960;
 - Scholars of law & economics initially more concerned with criminal law, contract law, tort law, competition law;
 - Only recently has law & econ opened up to administrative law, constitutional law and even international law.

2. What is “Positive Constitutional Economics”? (2)

- Constitutional Economics can also be thought of as a subfield of the economic analysis of politics (or public choice)
 - Public Choice scholars were interested to explain the political process, i.e. the behavior of voters, politicians, bureaucrats etc. under given rules;
 - But the rules are not given, they can be chosen as well;
 - Buchanan and Tullock (1962).

2. What is “Positive Constitutional Economics”? (3)



3. The Economic Effects of Constitutional Law

- Constitutions regularly deal with a variety of aspects:
 - (Negative) Rights of individuals vis-à-vis the state
 - State organization, i.e. the competences of the various state organs.
- Aspects of state organization include
 - The form of government (parliamentary or presidential),
 - The vertical structure of the state (unitary or federal),
 - The kind of democracy (only representative or also direct)
 - The competence of the judiciary,
 - Deficit rules,
 - The electoral system,
 - ...
- All of these can be analyzed relying upon the economic approach.
As an illustration, I will focus on the last aspect.

3. The Economic Effects of Constitutional Law (2)

- Electoral formula:
 - Majority rule vs. proportional representation
- Duverger (1954) : Majority rule (also called “First-past-the-post”) leads to 2 party systems, Proportional representation leads to more party systems.
- Consequence for number of parties in government?
- Consequence for policies, budgets etc. by coalition governments?
 - Tax rates could be higher under proportional representation
 - Governments provide 2 types of goods, namely (1) pork barrel and (2) genuine public goods; in majority rule systems promising pork could secure achieving the plurality of votes while it does not make much sense in proportional representation

3. The Economic Effects of Constitutional Law (3)

↪ Prediction:

- There will be more pork barrel goods under majority rule.
- Additional aspects of the electoral system beyond electoral formula:
 - District size (number of seats per district);
 - Ballot structure (individuals vs. party lists).
- **So what effects could these have?**
- Persson and Tabellini (2000) compare single member districts/MR with one nationwide district/PR: focus on swing states and pork in the first case, on genuine public goods in the second.

↪ Prediction:

- There will be more genuine public goods with larger districts.

3. The Economic Effects of Constitutional Law (4)

- Ballot structure: individual candidates more directly accountable than party candidates (party candidates are part of a common pool [with all the common pool problems])
- MR systems often with higher proportion of individual candidates than PR systems
- Prediction:
 - Corruption and political rents should be lower, the higher the proportion of individually elected candidates.
- Question now: are the data in line with these predictions?

3. The Economic Effects of Constitutional Law (5)

- We are interested in estimating a version of the following equation:

$$Y = \alpha + \beta M + \gamma ELRULE + \delta Z + u$$

- Y can be any of the dependent variables just mentioned:

- | | | |
|---|---|-------------------------|
| (1) Central government expenditure; | } | Fiscal variables |
| (2) Social Services and Welfare Spending; | | |
| (3) Budget Surplus; | | |
| (4) "Graft"; | } | Governance variables |
| (5) Corruption Perceptions Index; | | |
| (6) Government Effectiveness. | | |
| (7) Output per worker; | } | Income/Growth variables |
| (8) Total factor productivity. | | |

3. The Economic Effects of Constitutional Law (6)

- Here are some results:
 - (1) Central government spending is some 6 percentage point lower under the majoritarian than under the proportional rule.
 - (2) The higher the number of individually elected candidates, the lower both rent-seeking and corruption.
 - (3) The larger the electoral districts, the higher both rent seeking and corruption.
 - (4) BUT: Majoritarian systems reach levels of labor productivity slightly below those of proportional systems.
 - (5) Results very robust, in particular regarding the number of individually elected candidates and district size.

3. The Economic Effects of Constitutional Law (7)

↳ Lessons learned:

- Different electoral systems can have very important consequences regarding fiscal policies, the quality of governance and economic growth.
- Nitty-gritty details (size of district, proportion of individually elected candidates) can be extremely important.

↳ Now: do we observe similar effects regarding the other constitutional components mentioned before?

3. The Economic Effects of Constitutional Law (8)

- Some highlights from other studies:
 - Government spending tends to be lower in presidential systems.
 - Regarding the vertical structure of the state, it is extremely important to separate federalism from decentralization. In fact, things are even more complicated than that.
 - Using direct democratic instruments is more important than just having the possibility to use them. Again, detail is extremely important: whereas mandatory referendums are associated with 4 percentage points lower government expenditure; initiatives are connected with 6 points higher expenditure.
 - Deficit rules can constrain government spending; the Maastricht rules have, however, been without effect.

3. The Economic Effects of Constitutional Law (9)

- Results impressive; nevertheless, some words of caution are in order.
 - Details very important: important to take details adequately into account!
 - Number of observations limited; after all, there are only some 200 countries in the world.
 - Very difficult to establish causality (is it really majoritarian electoral systems that make governments spend less? Why do some countries establish them in the first place?)
- ↪ Necessity to endogenize constitutional rules; next step.

4. Endogenizing Constitutional Institutions

- Why do different societies choose different rules?
- Could be considered the core question of constitutional economics
- YET: almost no research has been done!
- General conjecture: will depend on the interests of powerful groups

4. Endogenizing Constitutional Institutions (2)

- Charles Beard (1913) tried to explain the voting behavior of the representatives to both the state conventions as well as the Philadelphia Convention based on their interests
- McGuire and Ohsfeldt (1986, 1989a, 1989b) took up that research program relying on modern econometric techniques.
- They write (1989a, 175):

"The statistical results show that merchants, western landowners, financiers, and large public-securities holders, *ceteris paribus*, supported the new constitution, whereas debtors and slave owners, *ceteris paribus*, opposed the Constitution."

4. Endogenizing Constitutional Institutions (3)

- Own study (together with Bernd Hayo):
What factors explain changes in judicial independence over time?
 - Some results:
Individual traits of politicians relevant, e.g., how they acquired power, how they lost power, the number of years they were governing, their gender etc.
- ↪ Shows that personal traits are important for the choice of institutions; this has been a largely neglected dimension in research

5. Open Questions – Possible Trends

(1) Broaden scope of dependent variables – include

- Human rights;
- Individual freedom;
- Justice

(2) Specification of constitutional variables

- There are many varieties of the presidential form of government

(3) Omitted variable bias / endogeneity; analyze role of

- Ideology,
- Trust,
- Social capital

5. Open Questions – Possible Trends (2)

(4) Transmissions channels

(5) Interaction effects

TO SUM UP:

Many exciting questions remain to be answered in constitutional economics!

Want to read more? Here are some references

- A survey on Positive Constitutional Economics:

Voigt, S. (2011). Positive Constitutional Economics II—A Survey of Recent Developments, *Public Choice* 146(1-2):205-256.

- A discussion of possible developments:

Voigt, S. (2011). “Empirical Constitutional Economics: Onward and Upward?” *Journal of Economic Behavior and Organization* 80(2):319-330.

- Two papers on endogenous constitutions:

Hayo, B. and S. Voigt (2010). “Determinants of Constitutional Change: Why Do Countries Change Their Form of Government?”, *Journal of Comparative Economics* 38(3):283-305

Hayo, B. and S. Voigt (2013). “Endogenous Constitutions: Politics and Politicians Matter, Economic Outcomes Don’t.” *Journal of Economic Behavior and Organization* 88:47-61.

Want to read more? Here are some references

- And some studies on single constitutional institutions:
- Blume, L., J. Müller, S. Voigt and Carsten Wolf (2009); The Economic Effects of Constitutions: Replicating – and Extending – Persson and Tabellini, *Public Choice* 139:197-225
- Blume, L., J. Müller and S. Voigt (2009). “The Economic Effects of Direct Democracy – A First Global Assessment”, *Public Choice* 140:431-61.
- Blume, L. and S. Voigt (2011). “Does Organizational Design of Supreme Audit Institutions Matter? A Cross Country Assessment“, *European Journal of Political Economy* 27(2):215-229.
- Blume, L. and S. Voigt (2011). “Federalism and decentralization – a critical survey of frequently used indicators.” *Constitutional Political Economy* 22(3):238-264.
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Thank you for your attention
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