

Towards a Research Agenda on the Emergence of (Informal) Constitutional Culture into (Formal) Constitutional Order

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In 1900, David Hilbert addressed the second International Congress of Mathematicians in Paris on the future of mathematics. His speech became famous; in it he listed 23 unsolved problems in mathematics from whose solutions much progress could be expected.... I am aware that I am no Hilbert..., but the problems are crucial, even if some are only generally circumscribed. Other economists may define different problems. No complete listing could ever be made. Each problem solved usually suggests new ones which could not have been stated without a given problem first being solved.¹

A simple and sobering glance at the world tells us that constitutionalism is rare and fragile. And that the challenges of constitutionalism are not mere academic preoccupations for constitutional political economists. Indeed, according to the *Freedom of the World 2011* survey,² less than half the world's population (43%, living in 87 countries) is considered to be free.³ The balance of the world is ranked as partly free (22% of the population, living in 60 countries) or not free (35%, living in 48 countries). Likewise, according to the *2010 Index of Economic Freedom*, a mere seven countries (of 179 graded) were listed as economically free. 23 were listed as mostly free and 58 as moderately free, while 55 were listed as mostly unfree and 36 as repressed (Miller and Holmes 2010). We see the consequences of ineffective constitutional constraints everywhere, as the world teeters between too little and too much government – or, in the subtitle of Buchanan's (1975) book, between anarchy and leviathan. Most constitutions are either unable to prevent governments from confiscating

property, or unable to provide the institutions necessary for economic freedom and the ensuing economic growth. Neither extreme is conducive to human flourishing (see Scully 1998 and 1992 or the New Development Economic literature generally): one sixth of humanity currently subsists on \$1/day, while one half ekes out a living on \$2/day. Constitutionally limited government is precarious and rare. Sadly, this challenge is anything but new: for a history of attempts at controlling the state through constitutional constraints, see Gordon (1999).

Yet constitutions do exist, and some even do a decent job of limiting government. Oppression may be the norm for most of humanity today, but it is not universal. How is this possible? How can paper limit power? In sum, how are we to ensure that the Faustian bargain of government does not end in tears, if we accept Ostrom's (1980) assessment that

the very nature of government involves the legitimate use of force in ordering human relationships. The use of force in human relationships is of the nature of an evil. The use of instruments of evil as a necessary means to realize the advantage of ordered social relationships creates a fundamental moral dilemma that can be appropriately characterized as a Faustian bargain. A reasonable expectation, given the Faustian bargain, is that government will fail.

The answer lies not in the formal. It cannot. Constitutions are ultimately mere parchment and the formal enforcement mechanism of last resort. There can be no outside appeal to any other formal institution beyond the constitution, hence the importance of informal constraints in maintaining constitutional order. Hardin (1988) explains that "without support from relevant people, perhaps often in the grudging form of those unable to co-ordinate in refusing support,...rules would not be worth the paper on which they are recorded." If a critical mass of individuals refuses to be bound by constitutional constraints, if it rejects constitutionalism generally or the constitution specifically, if it does not accept the deferral of current power for long-run stability, the constitutional undertaking will fail. Expediency will trump principle. Power will prevail over rules. Short-term gain will win over long-term coordination. In the words of Franklin and Baun (1995, vii), "in the constitutional state the rule of law prevails, not because the courts or police say it should, but because there exists a general acceptance of and confidence in the law."⁴

These informal constraints are captured in the concept of constitutional culture, something best understood as a Hayekian mental model, a heuristic that people use to make sense of the world and guide their actions (see also North 1990). In Hayekian language, constitutional culture, as part of the

beliefs, customs and norms on which people rely to make constitutional decisions, constitutes a "fact of the social sciences" (Hayek 1948[1942]).⁵ Existing attempts at defining constitutional culture offer a useful start.⁶ But these approaches all share the same major shortcoming, as they limit the concept of constitutional culture to situations where the polity accepts constitutional constraints. Defining constitutional culture as a culture that accepts constitutionalism is simply too limiting, as it does not shed light on constitutional failure, which is much more common than constitutional success. Many cultural factors will be important in determining constitutional success, from willingness to suspend the constitution in the face of a crisis, to balancing political expediency with constitutional principle, and from the relative weights assigned to majoritarianism versus constitutional principle, to the way individuals feel about constitutional norms (whether explicitly and rationally, or implicitly and emotionally). Adopting a broader definition, constitutional culture captures an attitude about constitutional constraints and constitutionalism; it includes the implicit and explicit, stated and unstated, conscious and subconscious, thoughts, feelings, beliefs, impressions and norms a group holds about the nature, scope and function of constitutional constraints; the thoughts and feelings about balancing political expediency with constitutional principle; and levels of trust and cooperation, within one's community, and also with strangers. For theoretical details on constitutional culture, see Ferejohn *et al.* 2001, and Wenzel 2007 and 2010a.

Constitutional culture forms the bridge between constitutional parchment and constitutional order.⁷ This relationship can be expressed in two pithy summaries from Boettke (1998): "Culture...refers to those beliefs and ritual practices which give institutions legitimacy. In order to develop a theory of institutional change and acceptability, institutions must be linked to culture." In sum, "rules are only rules if customary practice dictates."

Unfortunately, constitutional culture is underappreciated and misunderstood in the literature. One need only look at the history of failed constitutional transplants (see *e.g.* Billias 1990, Blaustein 1992, Boettke *et al.* 2008, or Friedrich 1967). Putnam (1993, 17) captures the problem elegantly in his reminder that "two centuries of constitution-writing around the world warn us...that designers of new constitutions are often writing on water." For a cheekier phrasing, we have the title of Kolesar (1990): "North American Constitutionalism and Spanish America: A Special Lock Ordered by Catalogue, Which Arrived with the Wrong Instructions and No Keys?" Without a better grasp of constitutional culture, the constitutional political economy project will fail, and will not successfully address the challenges of constitutionalism and its benefits.

In the humble spirit of Morgenstern (1972), this paper proposes a research agenda to increase our understanding of constitutional culture and its role in constitutional success.⁸ Analytically, I approach constitutional culture as a complex emergent phenomenon,⁹ which is "indeed the result of human action, but not the execution of any human design" (Hayek 1967, 96). Rather than being designed (as is constitutional parchment), constitutional culture emerges from the theories and worldviews of individuals and their interactions with others. Constitutional culture is a complex phenomenon, as it is the result of millions of interactions, as culture changes and ideas are adopted and rejected. Formal constitutional parchment, judicial interpretation, and constitutional practice will all affect the ways in which people interpret the constitution, as elite opinions are assessed, accepted, and rejected. Likewise, constitutional culture emerges throughout society, in the form of changing practices and mores, as judges interpret constitutions and politicians practice constitutionalism according to changing culture.

The agenda is organized into eight proposed research programs: the first four are attempts to study constitutional culture directly: (1) economic sociology; (2) economic anthropology; (3) applied mesoeconomics; and (4) social indicators as proxies for constitutional culture. The next four are indirect attempts, through the study of proxies or history: (5) constitutional review as a proxy for constitutional culture; (6) comparative case studies; (7) social change; and (8) lessons from the anti-constitutionalists.

In each case, there exists a rich literature on related topics, a literature that has not been integrated into a constitutional analysis, or a literature that does not account for constitutional culture. To name but a few examples, North (1990) and Hayek (1952) have written on mental models; Boettke *et al.* 2008 have written on institutional stickiness; Boettke 1998, Harrison and Huntington 2000, and Jones 2006 have written on culture and institutions; and the literature in comparative politics is mature. All these are closely related and shed light, if indirectly, on constitutional culture. The key is to build on this literature within a framework of constitutional culture.

This research agenda will hopefully open the path to greater understanding of social change, with positive ramifications for international development, constitutional success, limited government, individual rights, and the alleviation of human suffering at the hands of Anarchy and Leviathan. Just as Morgenstern humbly observed that he was no Hilbert, I recognize that I am no Morgenstern, and the list of research directions is far from exhaustive.

Research Program #1: Economic Sociology

The neoclassical model¹⁰ surely has its uses. It is helpful as a pedagogical exercise, and offers methodological rigor, but it loses traction quickly in a cultural context. Indeed, under its extreme assumptions, culture is irrelevant. We should be able simply to export the US constitution to struggling countries, because it has worked so well at promoting individual rights and economic growth (if relative to the rest of the world). But that is not the case, as pointed out by a growing literature that culture does in fact matter. Fortunately, Boettke (1998) reminds us that "aggregate macroeconomic data is not the only data available from which we can learn about the nature and causes of the wealth of nations." Unfortunately, the use of sociology to complement economics is difficult. It bears sharing Evans' (2007) lament:

The study of culture nestles uneasily within economic literature, on account of its inherent immeasurability. Despite earlier calls (Boulding 1974) it has only begun to be taken seriously by economists fairly recently, along with the necessary methodological change from quantitative techniques (such as econometrics) toward qualitative methods (such as ethnography (Chamlee-Wright 1997, Tilly 2003) and analytic narratives (Bates *et al.* 1998, Rodrik 2003)). Some studies attempt to use various proxies for culture to establish its causal influence on economic outcomes (Guiso *et al.* 2006) but aggregate data can't hope to understand the embedded, subtle and local knowledge that constitutes society. Cultural issues are complex and will yield emergent phenomena, and must therefore be studied as a process, rather than an essence.

Therefore the incorporation of culture into economic theory will not be straightforward, because it is not merely an extra variable to be added to an existing framework. On the contrary, "culture is not another factor to be considered in addition to rational incentives, it is the underlying meaning of the specific content of any rational choice" (Lavoie and Chamlee-Wright 2000, 42).

For a general literature on economics and sociology, see Smelser and Swedberg 2005. As a superb starting point for constitutional culture, see Boettke *et al.* (2008) on institutional adoption. More broadly, see Harrison and Huntington 2000, Pejovich 2003, North 1990, Boettke 1998, or Jones 2006. Such works are rich and promising, but more is needed, to bridge the rigor (and limits) of traditional economic analysis, with the insights (and limits) of sociology, as we try to understand the economic and constitutional implications

of culture. A more robust theoretical foundation in economic sociology is required. As a first attempt, perhaps we can map culture as price-elasticity of demand in neoclassical price theory: a change in price, like a change in incentive or an institutional change, will have an effect. But the extent of that effect will depend on elasticity, or culture. Alternatively, culture may be seen as the utility curve interacting with the budget constraint of institutions. Not to get lost in analogies, both are important in predicting and influencing outcomes. It is clear that both culture (the informal) and institutions (the formal) are important and mutually influencing.

While a better theoretical understanding of economic sociology has much potential fruit for economics generally, this path is particularly promising for a better understanding of constitutional culture.

Research Program #2: Economic Anthropology

Chamlee-Wright (2010, 23) comments that "to readers coming from sociology, cultural anthropology, or oral history, the notion that qualitative methods are 'heterodox' or require explanation or defense probably sounds absurd." However, "to the vast majority of economists, qualitative methods are completely alien," even if they can shed important light on complex emergent phenomena.¹¹ If constitutional culture is key for an understanding of constitutional order, it is also difficult to measure, and impossible to measure directly. But important elements of constitutional culture can be estimated through economic anthropology. Boettke (1998) offers the encouragement that "we can approach the question in a *multi-disciplinary* manner and incorporate arguments and empirical information developed in other areas of the social sciences, such as the results of case studies and the evidence gleaned from ethnography."

Higgs 1997, Blinder *et al.* 1998, or Stringham *et al.* 2008, are all successful examples of this methodology in other fields (generally, see also Chamlee-Wright 2010 on the methodology of economic ethnography). For one great example of such work, see Hernandez *et al.* 2006, who conduct a national survey of 63 questions, interviewing a sample of 1,000 adult Argentines drawn from major urban populations.¹² Such studies, alas, are rare and underdeveloped in the specific field of constitutional culture.

As a first step, constitutional culture can be measured through a series of surveys. Such surveys would ask respondents drawn from a wide variety of socioeconomic and epistemic communities questions about their constitutional knowledge, their perceived relevance of the constitution, the constitution's proper role in public life, etc.¹³ The second approach would be to look at the demonstrated preference of the popular press. Under this approach, we can

look at references to the constitution, constitutional law, and constitutional rights in the popular press. So, for example, we could look back in the archives of the major newspapers in X countries over Y years and compare the references –much like Stringham *et al.* 2008 on stock markets or Higgs 1997 on regime uncertainty and business expectations. Factors like the following will likely affect the numbers: the presence, type and visibility of an institution of constitutional review;¹⁴ freedom of the press; industrial and legal organization of the media, etc. Constitutional visibility in the press is a demonstrated preference for constitutional culture, and can paint a very instructive picture. One preliminary example (Declercq 2006) studies press references to France's Constitutional Council during the (mostly) political and (somewhat) constitutional crisis surrounding the 2006 attempts at labor law reforms.¹⁵

As with other forms of economic anthropology, a research program designed to discover constitutional culture would shed light on formal constitutionalism and suggestions for success.

Research Program #3: Lessons from Smaller Emergent Phenomena (Applied Meso-economics)

Many analytical problems come from the distance between the micromotive and the macrobehavior. We understand individual choice fairly well through microeconomic analysis, but group behavior is harder to explain. After all, groups don't act. As a remedy, it may be fruitful to look at intermediate points in the process of emergence, by studying emergent phenomena on smaller levels that are closer to the individual, then examining how these patterns apply on the macrolevel.

A theoretical literature on "mesoeconomics" already exists. Dopfer *et al.* 2004 explain the mesolevel between micro and macro, and Schelling 1978 writes on "micromotives and macrobehavior"; for studies in the field of comparative politics, see Almond and Verba 1965; Putnam 1978 and 1993, Sartori 1965, or Franklin and Baun 1995.

In the spirit of disaggregation, this research program proposes to build on a parallel literature, in order to break down social data from unmanageable and incomprehensibly huge aggregates, into smaller and more malleable phenomena. A preliminary and brief list of examples of this type of inquiry includes the cross-country comparative study of cooperation in small groups (*e.g.*, children, social outings and class consciousness, professional teams, clubs; attitudes towards sharing and property rights); queuing patterns (or lack thereof); driving patterns; and stadium exit patterns (including such things as

number of trampling accidents *per annum* and *per capita*, efficiency of exiting, etc.).

This research program, if successful, would cast light on constitutional culture indirectly, by showing relevant patterns on a more comprehensible level.

Research Program #4: Social Indicators as Proxies for Constitutional Culture

Social indicators have already been used convincingly to show links between culture and economic growth (see Sullivan 1991 or Taylor and Jodice 1983, generally). In addition to the literature cited above, see also Weber 1905 and Barro and McCleary 2003 on religion and economic performance; Knack and Keefer 1997 on social capital and economic performance; Williamson 2009 and Williamson and Kerekes (forthcoming) on formal versus informal institutions and economic performance; or LaPorta *et al.* 1997 and Fukuyama 1995 on trust. Likewise, Grondona 2000 proposes a list of twenty indicators¹⁶ with an impact on economic development.

There is every reason to believe social indicators can also shed light on constitutional culture. Existing studies could easily be adapted into an altered focus on constitutional culture. Such indicators as voter turnouts, tax evasion rates, public demonstrations, public strikes, trust and corruption indexes, and riots, paint a picture of a population's political philosophy, its sense of its relationship with the state, and its mode of expression, all of which are related to constitutional culture. A population's demonstrated preference about the relative efficiencies of making a ruckus, versus voting, versus writing letters and op-ed pieces, versus hiring a lobbyist, versus doing nothing (because all is well, or because one feels powerless), all shed light on that country's prevalent attitudes towards constitutional constraint, the role of the citizen, the role of the state, and the interactions between the two.

Since constitutional culture is, after all, a reflection of other underlying attitudes (about power, constitutional constraint, respect for others, etc.), it would make sense to study social indicators from various countries, and tease out informative patterns.

Research Program #5: Constitutional Review as Proxy for Constitutional Culture

A country's prevalent constitutional culture is reflected in the status granted to its founding document. The constitution might be understood as an

entrenched document that sets forth general parameters within which the vagaries of in-period politics can take place. Conversely, it can amount to a set of by-laws within which government operates, a glorified set of parliamentary procedures. It can be viewed as an expression of timeless principle, with nothing but details left to the foibles of a democracy that is sharply confined by constitutional constraints.¹⁷ Or it can be viewed with suspicion as an antiquated relic of aristocratic interests protecting themselves from the popular will (see *e.g.* Gardbaum 2001).

For existing case studies on constitutionalism, which could easily be recast as foundations for a study of constitutional culture, see, *e.g.* Gwyn 1995 and North and Weingast 1989 on the UK; Provine 1992 on France; Gibson *et al.* 1998 on Russia; and Ferejohn *et al.* 2001 or Lee and McKenzie 1987 on the US; see also Sartori 1965 on culture more generally.

Fortunately, a country's institution of constitutional review provides an important proxy for constitutional culture. Indeed, the scope and details of the supreme authority on constitutional matters reflects the underlying sense of the constitution's importance. The spectrum runs from the American-style independent judicial review of constitutionalism, to the British/Commonwealth tradition of parliamentary sovereignty.¹⁸ The former reflects a distrust of factions and the intoxication of power, placing entrenched constitutional principle above a possible tyranny of the majority. The latter distrusts an aristocratic *gouvernement des juges*, trusting Parliament as the expression of the popular will against unelected interests, as the people act as their own constitutional check against potential usurpers (including judges). In between the American and Commonwealth traditions lies the Kelsen compromise,¹⁹ which has been adopted by most European countries. This innovation comes from a tradition of parliamentary sovereignty, but tempers it with partial constitutional review: in a Kelsen system, constitutional review takes place in the form of a constitutional council that has fewer powers than American-style courts. Although weaker, Kelsen councils can still review the constitutionality of laws, if they are approached from within the government. Other traditions of constitutional review can be studied; more can also be learned from a closer association among comparative politics, constitutional law and constitutional political economy.

Understanding a country's institution of constitutional review – from its theoretical purview to its actual mechanics – will cast light on that country's underlying constitutional culture, and thus add to our knowledge of constitutional culture generally.

Research Program #6: Comparative Case Studies

There is wisdom to be gleaned from a comparative study of the constitutions that have worked and those that have failed, as we watch for patterns to emerge within the comparisons, both cross-country and over time.

Multiple related studies exist, although they are only indirectly relevant to constitutional culture. For example, Garcia Hamilton 2005 shows that the lingering cultural atavisms of Spanish colonialism still hamper contemporary Argentina's institutional development. Gardbaum 2001 discusses the Commonwealth model of constitutionalism, in which Parliament acts as its own check; he explains the historical foundations behind rejection of judicial review, which is seen in that tradition as an antiquated, anti-democratic *gouvernement des juges* that upholds Crown over Commons (see also North and Weingast 1989). See also, for example, Hummel 2007 or Ferejohn *et al.* 2001 on the American founding; Moran 1999, Neher 1994, Beer 1997, Mayo 1987, or Sidel 1996 on Asian examples; and Skach 2005, Provine 1992, Stone 1992, Gardbaum 2001, Schwartz 2000, Epstein *et al.* 2001, or Evans and Aligica 2009 on European examples. On constitutional transfer generally, see, *e.g.* Backer 2008, Billias 1990, Blaustein 1992, Friedrich 1967, Franklin and Baun 1995.

As with the other items on this proposed agenda, the task at hand is one of integrating the insights from a related literature into a better understanding of constitutional culture as a complex emergent phenomenon. Methodologically, there is much to be borrowed from the so-called "comparative method," useful for uncovering patterns in small data sets, and combining the precision of quantitative work with the flexibility of qualitative analysis (see Ragin 1987 and Evans 2007; see also Bates *et al.* 1998 or Rodrik 2003). Wenzel 2010b argues that Argentina erred in selecting a constitution that may have seemed perfect on paper, but didn't work, while Mexico wisely adopted a suboptimal constitution that matched indigenous culture and was thus successful. Likewise, Wenzel 2010c presents a similar story on Japan versus the Philippines: while Japan's post-World War II constitution explicitly tied in to indigenous culture, legal practices, and constitutional tradition, the Philippines attempted to impose foreign concepts of rights and rule of law. Japan now thrives economically and politically, while the Philippines has been mired in dictatorship, corruption, and economic stagnation.

The ultimate goal of these proposed queries will be comparative over a cross-section of countries. It would also likely prove useful to study constitutional culture within given countries over time to explore the relationship between constitutional culture and constitutional success. Again, the challenge will be one of integrating insights from the comparative politics literature into a framework of constitutional culture.

Research Program #7: Social Change

To be sure, it is dangerous to play with institutional change. Martin (2010) reminds us that the "liberal social scientist does not lay claim to an art for fixing society. What he knows is that it will take free people trying different things to improve the world." Likewise, Adam Smith (1997[1759], VI.II.2: 59-60) cautions us that

The man of system...is apt to be very wise in his own conceit, and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all its parts, without any regard either to the great interests, or to the strong opposition which may oppose it: he seems to imagine that he can arrange the different members of a great society, with as much ease as the hand arranges the different pieces upon a chess board: he does not consider that the pieces upon the chess board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess board of human society, every single piece has as principle of motion of its own, altogether different from that which the legislature might choose to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be, at all times, in the highest degree of disorder.

But Adam Martin and Adam Smith's cautionary words do not mean that we should abandon any attempt at social change or influencing the climate of ideas in favor of constitutional constraint. Hayek (1960), for example, enjoins us to avoid *radical* rewriting of social institutions, because of the likely negative consequences of choices made with limited knowledge and reason. But he certainly does not reject all change, advising instead that "in all our endeavor at improvement we must always work within the given whole, aim at piecemeal, rather than total construction, and use at each stage the historical material at hand and improve details step by step rather than attempt to redesign the whole" (Hayek 1960, 70, footnote omitted).

There is much to be learned from past attempts at social change, whether successful or not. Hayek himself engaged in such social change, as advocated in his essay on "The Intellectuals and Socialism" (Hayek 1967[1949]). Hayek's success is chronicled in Cockett (1995), which details the

slow rise of Hayekian thought through British intellectual and political society from the 1930s to the 1970s, culminating in the reforms implemented under Margaret Thatcher's premiership. See also, *e.g.*, Evans and Aligica (2009) on the post-Soviet transmission to neoliberal economics throughout Eastern Europe; Harrison and Huntington (2000) on attempts to change national mental models away from fatalism; more generally, see Garcia Hamilton 2005 or Mazzone 2005. All of these are related indirectly to constitutional culture; few discuss constitutional change specifically (see Johnson 2001 and Rakove 2001 on attempts to establish the US constitution as a focal point in post-revolutionary America; see also Gibson et al. 1998 on selling judicial review to the post-Soviet Russians).

As with the other proposed research programs, the method will be twofold. First, to study social change through the particular optic of constitutional culture. Second, to glean lessons from social change, as intellectual entrepreneurs attempt to change constitutional culture in favor of constitutional constraint, liberty, and economic growth.

Research Program #8: Lessons from the Anti-Constitutionalists

Thus far, I have focused on countries that have tried to maintain rule of law and constitutionally limited government. In a useful oversimplification, we can think of constitutionalism as an equilibrium between expediency and principle (Buchanan 1981) – the principle of the constitution and the temptation of in-period politics, human passions and power. Constitutional order thus reflects a constitutional culture's demonstrated preference for a given equilibrium.

There is much to be learned from countries that have rejected constitutionalism – not just countries that have experimented with constitutionalism or where constitutionalism has occasionally failed, but countries that have rejected it outright for more than just brief interludes. In other words, the pseudo-constitutional order is still a focal point in a coordination game supported by a given constitutional culture. That constitutional culture may indeed reject constitutional constraints, but it nonetheless evinces a certain attitude about the nature of governmental power. Two simple examples will illustrate. First, Neher (1994) reports that, as recently as 1992, "many Filipinos...believed that the American emphasis on individualism [in the 1946 constitution] had shattered Philippine communitarian values as well as disciplined restraint, making democracy an unworkable system because the results were not improving the people's

standard of living." Second, Davis (1995, 71) writes that, on "September 6, 1930, crowds of Argentines stood in the streets of Buenos Aires, and cheered the army as it moved toward the [presidential palace]. President Hipólito Yrigoyen, Argentina's first 'man of the people,' had just been forced to resign, and the remnants of the party were about to be ousted." Both cases illustrate a constitutional culture that rejects constitutionalism.

Theoretical work and case studies on dictatorship and democracy offer a good starting point (see Tullock 2005, Lijphart 1984, Moore 1966, or Diamond *et al.* 1989). Cases of constitutional rejection, recast within an optic of constitutional culture, provide important and potentially rich terrain, as they represent the extreme choice of Leviathan over constitutionally constrained government. They can thus shed light on the situation of countries that do want constitutionalism and institutional reform, but don't know where to start.

Conclusion

Lucas (1988) famously warned of the intellectual obsession that can come from studying institutions and growth: "Is there some action a government of India could take that would lead the Indian economy to grow like Indonesia's or Egypt's? If so, what exactly? If not, what is it about the "nature of India" that makes it so? The consequences for human welfare involved in questions like these are simply staggering: Once one starts to think about them, it is hard to think about anything else." Although the particulars have changed, the principle remains. The good news is that, in the quarter century since Lucas wrote, economics has made great strides in finding the causes of economic growth.²⁰ The bad news is that we still don't know how to get there. As Boettke (1998, emphasis in original) writes, "what must be done is to square two seemingly contradictory propositions in a non ad-hoc manner. Namely the propositions: (1) That we *know* more of *what* it takes to create an 'economic miracle' than we often admit as economic scientists. (2) That we *know* less about *how* to make an 'economic miracle' than we want to admit as economic policy-makers."

The problem comes down to the following claim, also from Boettke (1998): "It is true that economic performance is a function of rules, but rules are a function of culture." Much important work has already been conducted towards a better understand of rules, and a better understanding of the underlying culture that sustains them. The New Development Economics is, by itself, an exciting intellectual revolution that casts aside a half century of failed development policies. Current work is building on the New Development Economics to understand the process of institutional adoption and social change. As exciting and promising as that current work is, much

remains to be done, both in existing directions and in the particular case of constitutional culture.

The eight research programs in this proposed agenda are ripe with potential for answering the difficult questions of emergent constitutional culture. I suspect these suggested areas of inquiry are merely the low-hanging fruit in a research agenda. I hope they will open the doors to enlightening research and ultimately a better understanding of the constitutional culture that underlies constitutional success. Again, this list is far from exhaustive. Again, I am no Morgenstern. But, returning to the epigraph, "the problems are crucial, even if some are only generally circumscribed. Other economists may define different problems. No complete listing could ever be made. Each problem solved usually suggests new ones which could not have been stated without a given problem first being solved."

The impact of good answers will, in the words of Lucas (1988), be staggering. Not just for the curious constitutional political economist, but for the half or more of humanity that is still excluded from economic growth and the blessings of liberty.

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Notes

¹ Morgenstern (1972)

² www.freedomhouse.org

³ And even that freedom is relative. We need only look at the "free" US, where individual rights are steadily making way for governmental prerogative, and where 40-50% of economic activity is controlled by the government (depending on sources and calculation methods; specifically, total government spending as percentage of GDP).

⁴ On willingness to be bound, generally, see Elster 2000 and Hardin 1999. See also Ostrom (1997) on the importance of a culture of self-governance and self-organization, or Hayek's (1960) argument on the importance for "the constitution of liberty" of respecting individual spheres.

⁵ For details, see Wenzel 2010a. For space considerations, I cite here only the title, which should make my point on its own: "From Contract to Mental Model: Constitutional Culture as a Fact of the Social Sciences."

⁶ See, e.g. Ferejohn *et al.* 2001, especially 10 and 14, Mazzone 2005, Friedman 1975, Kahn 1999 and Lupu 1990, and generally Levinson 1988; see also Merriam 1931.

⁷ We can think of constitutional order as that which emerges when the constructed order of parchment – as an expression of founding goals and constitutional aspirations – meets the reality of the underlying constitutional culture.

⁸ See diZerega (2008) on a similar research agenda, if broader, on "new directions in emergent order research"; see also Dopfer *et al.* (2004) for a preliminary and rich essay on the mesolevel, between the micro and the macro.

⁹ See Martin 2010 on polities as emergent orders. More generally, on complex emergent orders, see Hayek 1948[1942], 1960, 1967 and 1978, Schelling 1978, Resnick 1997, and Surowiecki 2005 as well as earlier articulations in Mandeville 1998[1732], Smith 1997 [1759], Ferguson 1767 and Hume 1958[1789]).

¹⁰ Perfectly rational and perfectly informed agents maximize their utility with zero transaction costs.

¹¹ For an impassioned *apologia* of qualitative methods and its frequent superiority over quantitative methods for revealing tacit knowledge, see Chamlee-Wright 2010, 23 and 27-31.

¹² They conclude with four general themes: (1) Argentines value and support democracy, even if they are not satisfied with its functioning, and have a specifically redistributive conception of it; (2) rule of law is very weak, yet there is a high demand for it; (3) anomie and corruption are widespread; and (4) the constitution is highly valued, if theoretically, yet there is weak knowledge of it. For all its strengths, this study is excessively quantitative. I refine this marginal flaw in Wenzel (2011), which adds qualitative work to their quantitative insights on Argentina's constitutional culture; among other benefits, the qualitative work overcomes the problem of preference falsification.

¹³ One particular problem will need to be overcome in this potentially very fruitful avenue: differentiating between expressed and actual preferences (or simply delusion or external impediments). For example, popular surveys in the USSR indicated that religion played no role in political or public life, and religious activity was rare; yet we now know that religion remained a vital and influential force throughout the years of communist dictatorship. I discuss this methodological problem in greater detail in Wenzel (2011).

¹⁴ The US Supreme Court, for example, has higher visibility than the Kelsen-type institutions prevalent in Europe. See Kelsen (1942).

¹⁵ The study shows that a scant 83 articles mentioned the Constitutional Council, out of a total of 12,000 articles on the projected reform published in the period covered by the study. It also shows the polity's general indifference towards, and ignorance of, the constitution and the Constitutional Council. A number of articles even contained primers on the Council's role, something unthinkable in the US, whose population follows at least the more visible Supreme Court rulings. The study concludes that "neither venerated nor shunned, the constitution has become irrelevant" (translation my own), and secondary to majoritarian considerations.

¹⁶ Religion, trust, moral imperative, views of wealth, views of competition, notions of justice, value of work, role of heresy, education as dogma or critical thinking, utility v. theory, the lesser virtues, time focus, attitudes on authority, two dimensions of control (of one's world), attitudes on salvation, attitudes on utopia, optimism, and attitudes towards democracy.

¹⁷ See Hayek 1960 on a sound relationship between democracy and constitutionalism.

¹⁸ See Gardbaum 2001 for a superb overview; see Wenzel (2012) for a working paper on this topic.

¹⁹ See Kelsen 1942.

²⁰ Generally, see the New Development Economics literature; for an overview, see Boettke *et al.* 2008.

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