

Ana Odorović, LL.M.*

Voigt, Stefan. 2020. *Constitutional Economics: A Primer*. Cambridge: Cambridge University Press, 138

Constitutions have remained an uncharted territory for economists for a long time, despite their relentless efforts to appropriate any remaining study subject traditionally associated with other social sciences and humanities, in particular, political science, history, and law. It is precisely at the intersection of these disciplines that constitutional economics emerged and particularly gained prominence on the verge of 21st century, with the significant increase in data availability and the development of specific cross-country indicators. The economists' interest in constitutions should not come as a surprise, given the mainstreaming of some of the closely related disciplines, such as public choice, economic history, institutional economics, and law & economics. What is somewhat astonishing is the expedited pace at which it has been developing, as well as the substantial number of avenues for fruitful research efforts. In his primer of constitutional economics, Stefan Voigt, one of the pioneers in this field, provides a type of blueprint for future “goldminers” in the area where to dig and which tools to use. Through a systematic account of the most influential research to date, Voigt aims to answer a rather simple question—do constitutions really matter? If they do, at least for some (economic) outcomes, yet another question arises—what is the explanation of the emergence and modification of constitutions within a society?

Before delving into more nuanced questions, the author first familiarizes the reader with the main concepts used by constitutional economists and then discusses the most common methodological and data-related limitations that they face. Through economic lenses, a constitution can be defined as a system of rules used for the provision of public goods within a society. It serves to constrain the representatives of the society in the way they choose what public goods are to be produced. However, as the author points out, there is little agreement among

* Teaching Assistant, University of Belgrade Faculty of Law, ana.odorovic@ius.bg.ac.rs.

economists regarding what economic problem constitutions aim to resolve.

One school of thought compares constitutions to contracts that solve a coordination game between members of the society. It can either be a social contract, a contract that emerges within principal-agent relationship, or a contract that works as a commitment device. The idea behind the social contract is that the members of society can be better off if they agree on disarmament, which would allow them to reduce the resources spent on protecting and stealing goods, or to produce public goods whose production by individual members is not profitable. Alternatively, the constitution can be perceived as a contract that constrains the actions of the agent, i.e. the government, and induces them to act in the interest of the principal, i.e. citizens. In the third version of the “constitution as a contract” approach, the constitution acts as a pre-commitment device for society as a whole, which suffers from time-inconsistent preferences. In contrast, subscribers to a different school of thought view constitutions as a bundle of conventions that serve to resolve a coordination game between the members of society. In their view, this explains the self-enforcing nature of constitutions, as the most basic set of rules for which there is no external sanction. Finally, some economists deny the possibility that the emergence of constitutions is the product of a rational human design, simply because the subjective knowledge of the individual actors cannot be easily aggregated. Instead, they see constitutional rules as a result of a trial-and-error or evolutionary process.

Regardless of the theoretical lenses through which constitutional rules are perceived, there is a number of methodological and measurement challenges with which empirical economists in the field struggle. According to the author, the main hurdle lies in the difficulty to establish causation because none of the constitutional traits used as explanatory variables are ever truly exogenous. Provisions are always affected to some extent by the specific context in which constitutions are created, which may also have independent impact on the outcome variable of interest. Given that randomized experiments are impossible, natural experiments are quite rare, and lab experiments—although on the rise—often lack real-world validity, empirical studies mainly rely on an instrumental variable approach, with several new tools gradually gaining significance. If one were to assume that identification strategy was not an issue, another challenge lies in establishing the transmission channel through which constitutional traits affect (economic) outcomes: is it through fiscal policy, public goods provided, or the efficiency of the government in the providing public goods, including low levels of corruption and political rents? Lastly, according to Voigt, measuring (coding) constitutions is very a complex endeavor, not only because

institutional details matter, but also because there is a gap between the *de jure* and *de facto* constitutional provisions—which is one of the central topics of this book.

Before looking at specific constitutional traits, the author discusses the differences between the economic outcomes of democracies and autocracies. The question is important not only because autocracies outnumber democracies even nowadays, but also because the constitutions of the two types of regimes tend to read very similarly. As the author puts it, one might wonder even what is the purpose of constitutions in democracies. One conjecture in the literature is that constitutions do not always serve as “window dressing” but rather allow the autocrat to make credible commitments and spur investments in that country. Interestingly, economic theory is inconclusive regarding whether higher growth rates are expected in democracies. While the rule of law and secure property rights should be conducive to greater investments, the high pressure to redistribute wealth in democracies could compromise growth rates. Although empirical studies also do not offer a clear answer, some evidence suggests that it is the transmission channel that makes a difference. While democracy is conducive to growth by increasing the accumulation of human capital, it hinders growth by reducing physical capital accumulation and by increasing government consumption. However, like Leo Tolstoy’s unhappy families, not all autocracies are created equal. As the author suggests, a more nuanced answer is needed by looking into different types of autocracies. The transition from autocracies to democracies is another question that has occupied constitutional economists for more than a decade. While there is no comprehensive theory of regime transformation yet, there is some agreement that the main factor is the change in the relative power of the interest groups, in particular those that have some positive veto power, i.e. power to have a negative impact on the size of the overall number of goods produced by the society.

In the central part of the book, the author considers the effect of specific constitutional rules. A broad body of knowledge is systematized following the usual structure of many recent constitutions (basic rights, horizontal and vertical separation of powers, the role of independent agencies, direct democracy, and electoral rules). For each set of rules considered, Voight provides an overview of the theory and empirics, and then endogenizes the selection of rules by analyzing the factors that lead to the choice of one set of rules over another. Given a large number of issues that are presented in a concise format in the book, only a handful of the most interesting conjectures will be reviewed. When it comes to the basic constitutional rights, it is puzzling that economic and positive social rights are expected to have opposite effects on income levels, because the latter imposes costs on those that generate income.

Nevertheless, the central issue is whether there is a congruence between the *de jure* and the *de facto* rights, which in turn often depends on other constitutional characteristics. Moreover, the gap between *de jure* and *de facto* rights may further depend on the factors that are driving the inclusion of basic rights in the constitution. It is argued that the basic rights that were granted as a result of coercion by external players (other powerful states or international aid donors), or as a consequence of acculturation (imitating how things are done in other countries), are less likely to be effectively enforced.

Horizontal separation of powers is another constitutional trait that preoccupies constitutional economists. In particular, it is hypothesized that parliamentary systems—as opposed to presidential systems—lead to higher taxes and government spending, as it is easier for them to collude with the executive. Similarly, it is argued that bicameral systems entail lower decision costs, leading to lower government expenditures. While the empirical results are still inconclusive, Voigt contends that the third branch—the judiciary—is the crucial part of the equation. In particular, the question is what sort of rules make the judiciary less accountable to those who have the power to reappoint (for example, term lengths or the involvement of judicial councils). Not surprisingly, the empirical literature suggests that only *de facto*—and not *de jure*—rules on judicial independence have an impact on economic growth. This intuitive finding naturally makes one wonder why would the legislature want to create an independent judiciary in the first place. One of the leading theories emphasizes the role of political competition and uncertainty: if politicians expect their party to remain in power, they are less interested in creating an independent judiciary than if they expect to lose power in due course.

An interesting theory has been developed concerning the vertical separation of powers: it is hypothesized that federally constituted states lead to greater government spending as opposed to unitary ones. Two arguments have been offered. Firstly, if the number of states is large, economies of scale in the provision of public goods cannot be achieved. Secondly, the federal government faces a moral hazard problem, i.e. it is impossible for it to credibly commit to not bailing-out states that can no longer service their debts. According to the author, the separation of power in the broadest sense may also include the involvement of independent agencies, or allowing citizens to be part of the decision-making process through direct democracy. Both of these constitutional traits are expected to lead to positive economic outcomes due to their ability to mitigate the principal agent problem between the citizens and their government.

Finally, one of the most comprehensive theories is offered regarding the effects of electoral systems. It is argued that coalition governments

are more likely under the proportional representation rule than under the majority rule. As a consequence, some scholars contend that parties participating in the coalition will want to cater to preferences of different constituencies, leading to higher government spending and tax rates. In contrast, under the majority rule, politicians will have an incentive to please those groups that can help them obtain plurality of votes, leading to greater financing of pork-barrel goods compared to genuine public goods.

The last part of the book is devoted to areas of constitutional economics, which are, in the author's opinion, the least explored issues and in a need of further investigation. An overarching issue in most of the considerations discussed earlier is *de jure – de facto* gap. As the author rightly points out, finding an optimal way to measure it and explain the factors behind it is one of the most important tasks for constitutional economists in the future. The other two topics that the author proposes are procedural rules underlying constitutional change and emergency constitutions.

The carefully balanced and unbiased selection of topics in this book makes the reader—depending on their prior knowledge and personal interests—occasionally regret that certain topics were not expanded at the expense of others. As one may expect from a primer, the theoretical parts of the book, in particular, often serve as a teaser in terms of publications that the reader needs to look for, rather than providing a full account of how the hypotheses were derived. For this reason, one may not repudiate any of the conjectures provided in this book without diving deep into the original publications that the book relies upon.

This very concise piece clearly speaks to the newcomers in the field, unselfishly revealing the issues and methods that are still rudimentary and unpolished—including the results of the author's own research. Its unpretentious and direct, yet profound and knowledgeable discourse appears inviting for scholars with different backgrounds. In fact, the book perfectly reflects the open spirit, lively debates and the rigorous analysis that Stefan Voigt nurtures at the Institute for Law and Economics at the University of Hamburg.