

Griliches Lectures: Comparative Perspectives on the State: 1 The Liberal-Democratic Constitutional Tradition and its problems.

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With a Little Help from my Friends...

- ▶ In the next three days I am going to synthesize ideas and findings from a number of different projects which represent joint research with my colleagues and friends. I shall proceed as if these were all my ideas. I wish! So let me start by recognizing that research is a joint product, and that's one of the things that makes it so fun and rewarding.
- ▶ In alphabetical order: Daron Acemoglu, Leopoldo Fergusson, Camilo García-Jimeno, Arda Gitmez, Simon Johnson, Sara Lowes, Javier Mejia, Eduardo Montero, Suresh Naidu, Nathan Nunn, Pascual Restrepo, Mehdi Shadmehr, Santiago Torres, Jon Weigel.

Introduction

- ▶ In these lectures I want to discuss what we really know about comparative political economy and whether we have more than a partial conceptual framework.
- ▶ A political economy argument goes like this: we are interested in a phenomenon - for example comparative economic development.
- ▶ We know from the theory of economic growth that economic development depends on the accumulation of factors of production, human capital (education), physical capital (machines, tools, factories), on technology and how production is organized (which helps determine how productive factors are).
- ▶ Accumulation, innovation and organization depend on incentives which are a function of the nature of institutions and these are the outcome of collective choices - they are determined through the political system.

An Example: Property rights in Africa

- ▶ An institution which every economist thinks is critical to development is the form and security of property rights.
- ▶ In developed countries it is more likely that people will hold property, such as land or buildings, with freehold tenure - one has an absolute right to sell or lease out a particular plot of land over which one has a legal title.
- ▶ But this is not the way land is held in much of the world. For example in Sierra Leone in Sub-Saharan Africa.
- ▶ Land is not owned by individuals, it is owned by families and extended kin groups with a very complex system of rights for access and use.
- ▶ Moreover, chiefs have control rights over the decisions of families which is a key source of their political power.

Transacting Land in rural Sierra Leone

Witnessed by the “Custodians of the Land”

(whether formally demanded or not) shall be bound to perform any obligation stipulated herein on its part to be observed and performed and a written statement to be given to the Land Owners and Chiefdom Council shall be well and sufficiently given if sent through the post by registered or recorded delivery addressed to the Land Owners and Chiefdom Council at the Chiefdom Council Office or left at such a place.

IN WITNESS WHEREOF the Parties have hereunto set their hands and seals the day and the year first above written.

SIGNED SEALED AND DELIVERED by the within named CHIEFDOM COUNCIL the said.

PC FAVIA SUNDIFU JIRIMA
[Signature]
(PARASOUNTCHIEF)

Daniel Songbar
[Signature]
(SECTION CHIEF)

10/1/16
(SECTION CHIEF)

YAMBA NGORBA
[Signature]
(HEADMAN)

In the presence of:
NAME: George Abie
ADDRESS: Geonben Kwange
OCCUPATION: Farmer
10/1/16

SIGNED SEALED AND DELIVERED by the within

Who Owns the Land?

The Landowning Families

Named:
LAND OWNERS the said

Sangha Max Lamon
Hamin 10/1/16

Brijina P. Kondolano
10/01/2016

Yamba Ngeba
10-01-2016 KTP

In the presence of:
NAME: Dr. A. G. E. JERRY

ADDRESS: 100 JAMBALLA RD SD

OCCUPATION: TELECOM OR LGU REPAIR

The contents of the foregoing indenture were read over interpreted and explained in the Mende Language to each of the above who seemed perfectly to understand the same before signing and or thumb printing respectively and sealing and delivering the same in the presence of

Comparative Politics

- ▶ Why do different societies make different (and more or less efficient) decisions with respect to (say) the form of property rights?
- ▶ In political economy we argue this is due to political institutions which aggregate preferences (decide whose views get more weight) and create incentives for politicians and bureaucrats.
- ▶ The difference between countries with economic institutions which promote development and those that don't, might be because their political institutions either/or
 - ▶ give more power to those with a vested interest in socially more desirable institutions (e.g. Robert Bates' *Markets and States in Tropical Africa* - in the spirit of the Grossman/Hart/Moore theory of the firm).
 - ▶ create better incentives for politicians to make collectively optimal decisions (accountability, Weberianism)

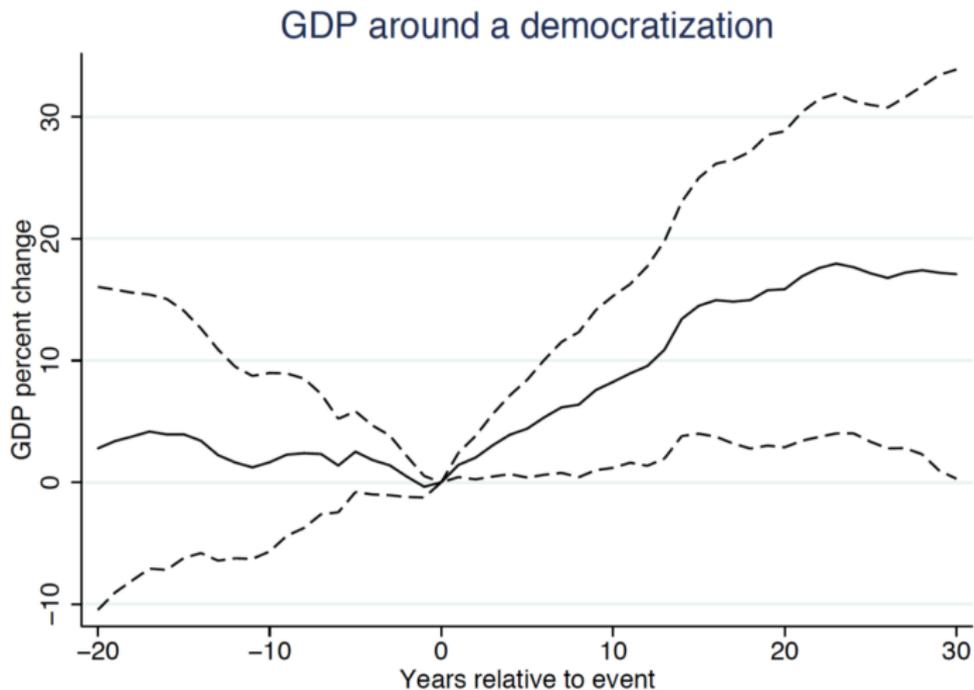
Which political institutions create desirable outcomes?

- ▶ Strong (Weberian) states (with capacity) able to tax, legislate, regulate and provide public goods.
- ▶ But the governance of the states matter. States which are
 - ▶ Accountable and Democratic.
 - ▶ Have checks and balances and the separation of powers.
- ▶ Are argued to have better outcomes - and create synergies with state capacity
- ▶ Other claims: federalism; form of the electoral system (connection between PR and public good provision); presidentialism versus parliamentarianism.

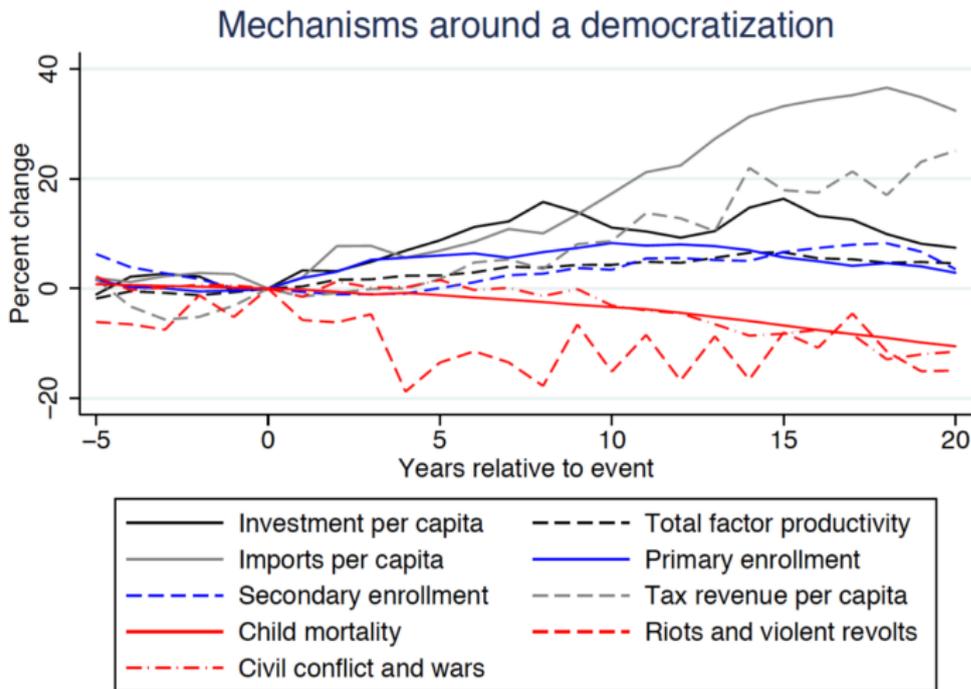
Empirical Evidence

- ▶ By the standard in economics, the evidence for any of these claims is quite weak. It is best for democracy and state capacity, but little causal evidence on most arguments.
- ▶ Democracy. Acemoglu, Naidu, Restrepo and Robinson (2019) “Democracy does cause growth”.
- ▶ Checks and Balances. Acemoglu, Johnson and Robinson (2005) “Rise of Europe”.
- ▶ State capacity.
 - ▶ Cross-national: Peter Evans and James Rauch on “Weberianness” and economic growth.
 - ▶ Sub-national: Michalopoulos and Papaioannou (2013) variation in historical centralization in Africa. Acemoglu, García-Jimeno and Robinson (2015) municipal state capacity in Colombia. Dell, Lane and Querubín (2018) Weberian-Patrimonial border in Vietnam.

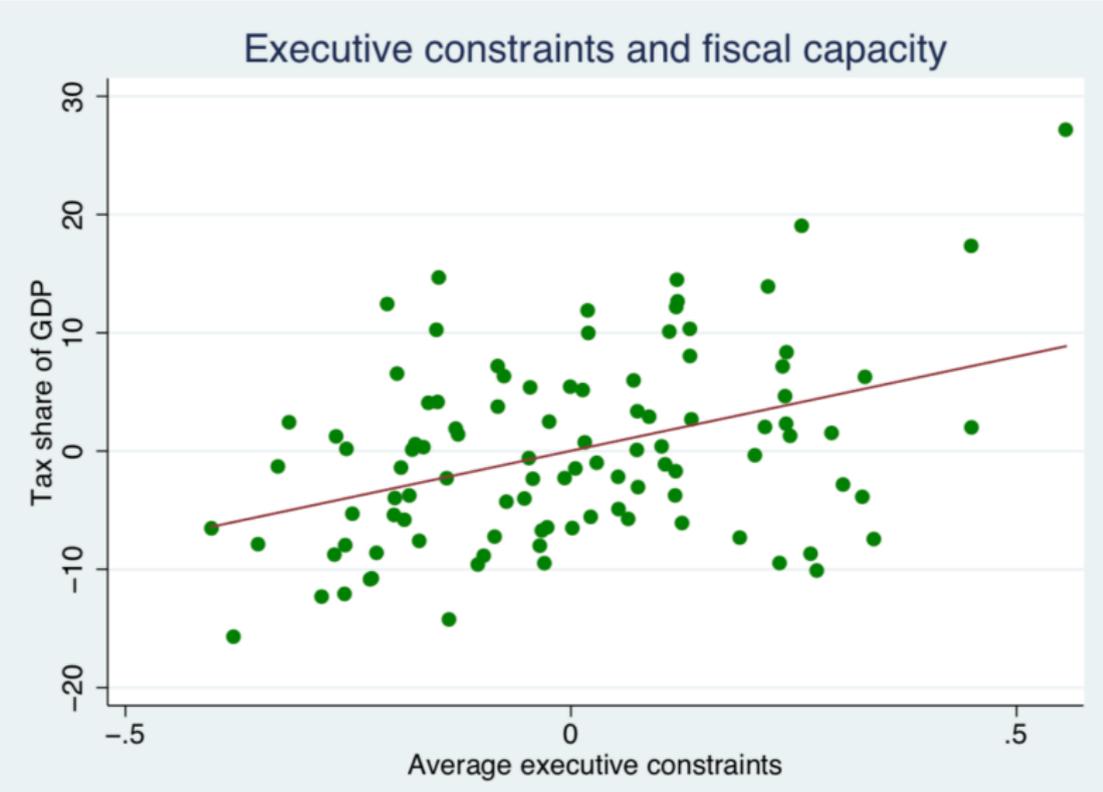
Impact of Democratization



The Mechanisms through which Democracy works



Constraints on the use of Power and State Capacity



The Intellectual Tradition and Warre

- ▶ But most of these arguments are based in a deep tradition of western political thought going back at least to the 17th century.
- ▶ It was Thomas Hobbes in his book *Leviathan* who advanced a famous view about the natural state of society, which he called (tellingly) “Warre”. He argued that in such a situation there would be
“continuell feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.”
- ▶ “Warre” was portrayed as an ‘anarchic’ situation of war of all against all — “of every man, against every man”.

Human Nature and its Economic Consequences

- ▶ Hobbes argued that conflicts would be endemic in any human interaction (because of peoples' propensity to engage in 'quarrell'),
"if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and ... endeavor to destroy, or subdue one an other."
- ▶ Economic incentives would be destroyed in the state of Warre:
"In such condition there is no place for industry, because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation nor use of the commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth."

The Solution to Warre: A Leviathan

- ▶ The solution to Warre was to provide authority, a powerful state.
- ▶ Hobbes used the image of the Leviathan, the great sea monster described in the Bible's Book of Job, to stress that this state was going to have to be powerful.
- ▶ The cover of Hobbes' book featured an etching of the Leviathan with the quotation from Job

"There is no power on earth to be compared to him" (Job 41. 24).

Two Routes to a Leviathan

- ▶ The first Hobbes called a “Common-wealth by Institution . . . when a Multitude of men do Agree, and Covenant, every one, with every one” to create such a state and delegate power and authority to it, as he put it “to submit their Wills, every one to his Will, and their Judgments, to his Judgment”. So a sort of grand social contract (“Covenant”) would accede to the creation of a Leviathan.
- ▶ The second he called a “Common-wealth by Acquisition” which “is acquired by force,” since Hobbes recognized that in a state of Warre somebody might emerge who would “subdueth his enemies to his will.”
- ▶ The important thing, however, was that “the Rights, and Consequences of Sovereignty, are the same in both”. However society got a Leviathan, Hobbes believed, the consequences would be the same, the end of Warre.

The Critique of John Locke

“I easily grant that civil government is the proper remedy for the inconveniences of the state of nature, which must certainly be great, where men may be judges in their own case” #13

- ▶ And so impartial dispute resolution is difficult and the proper solution is a state. But

“remember that absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men’s being judges in their own cases, and the state of nature is not to be endured; I desire to know what kind of government that is, and how much better it is than the state of nature.” #13

The Dangers of the State: Of Polecats and Foxes

- ▶ Contra Hobbes the state of nature (important change in terminology from Warre) may be better than a state since “men are not bound to submit to the unjust will of another.”
“what security, what defence is there, in such a state, against the violence and oppression of the absolutist ruler?” #93
- ▶ How could it be that
“they agreed that all of them but one should be under the restraint of laws . . . That is to think, that men are so foolish, that they take care to avoid what mischiefs may be done them by pole-cats and foxes; but are content, nay think it safety, to be devoured by lions.”

A Social Contract and the Rule of Law

- ▶ In Locke's view people agreed to create a state to exit from the state of nature

“the community comes to be umpire, by settled standing rules, indifferent and the same to all parties.”

“Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in civil society one with another.” #87

Popular Control of the State and Legislation

“The people ... could never be safe nor at rest, nor think themselves in civil society, till the legislature was placed in collective bodies of men, call them senate, parliament, or what you please. By which means every single person become subject, equally with the meanest men, to those laws which he himself, as part of the legislature, had established.” # 94.

- ▶ Once this has happened “the majority have a right to act.”

Majoritarianism versus one man rule?

- ▶ A tyranny of the majority?

“This is not much to be feared in governments where the legislative consists wholly or in part in assemblies which are variable.”

- ▶ But if the government consists of a permanent assembly, or one man

“there is danger ... that they think themselves to have a distinct interest from the rest of the community and so will be apt to increase their own riches or power, by taking what they think fit from the people.”

Separation of Powers

“for the same persons who have the power of making laws, to have also in their hands the power to execute them ... where the good of the whole is so considered, as it ought, the legislative power is put into the hands of diverse persons” #143.

- ▶ It is crucial that “they are themselves subject to the laws they have made.”

“And thus the legislative and executive power come often to be separated.” #144.

The Right to Rebel

“the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body even of their legislatures, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject.” # 149.

“What if the executive power, being possessed of the force of the commonwealth, shall make use of that force to hinder the meeting and acting of the legislature, when the original constitution of the public require it?” #155.

“the people have a right to remove it by force” #155.

The Tradition

- ▶ From Locke this tradition runs through Montesquieu's *Spirit of the Laws* to Alexander Hamilton, John Jay and James Madison and the *Federalist Papers*, to the Utilitarians and hence to modern political economy.
- ▶ From a theoretical point of view these writers were engaged in *mechanism design* - they had a model of the fundamental problems in society and they proposed institutional architectures which solved these problems.

What Problems?

- ▶ For Hobbes the problem was anarchy (Warre).
- ▶ For Locke dispute resolution in the state of nature (not anarchic and subject to 'natural law') and how to control power once created since rulers were self-interested.
- ▶ For Madison in the constitutional convention there were similar issues - the state was too weak under the Articles of Confederation to provide order and defense, it needed to be strengthened, but controlled (how to preserve state autonomy; the property rights - of slaveholders; how to stop big states ganging up on little ones).

Implicit Assumptions

- ▶ In these lectures I shall argue that there are a lot of implicit assumptions in this intellectual and theoretical tradition that create large conceptual problems in applying the intuitions derived from it to other parts of the world.
- ▶ I shall start modestly with a very specific issue. Recall that Hobbes motivated the need for a Leviathan by the threat of Warre and disorder. Once created the state could (legitimately) crush anyone who opposed it.
- ▶ The U.S. Constitution featured a “Treason Clause”. It left the punishment to be determined by the first congress which stipulated the death penalty.
- ▶ As Hamilton put it in Federalist 27 “The hope of impunity is a strong incitement to sedition; the dread of punishment, a proportionately strong discouragement to it”.
- ▶ Two pages later Hamilton does recognize that “seditions and insurrections” will certainly occur and that “there could be no remedy but force”.

Colombian Counterpart

- ▶ Hamilton's position seems very natural. The constitution was designed to provide order. Indeed, it had been stimulated, even made possible, by Shays' Rebellion in Massachusetts.
- ▶ But contrast this with the 1980 Colombian Penal Code

Title II. Crimes Against the Constitutional Regime.

Chapter I. Of rebellion, sedition and riot.

Article 125. Rebellion. Those who by use of arms attempt to overthrow the National Government, or who delete or modify the legal or constitutional regime by force, incur imprisonment of from three to six years.

- ▶ The original proposal from the commission that drafted the code in 1977 was **one** to six years.

The Logic of the Commission

- ▶ “... Rebellion implies absolute disagreement with a system and the understanding that change can be achieved in no other way than with armed uprising. It has been said that rebellion is the tool of the oppressed. Well, if rebellion triumphs, nothing would happen, but if they are defeated, it would be excessive to punish them for the actions that are the essence of combat.” (Romero, 1973, Proceedings Penal Code)
- ▶ “Political crimes, like rebellion, must have some privileges concerning punishment...Rebels, logically, conspire, use military clothes and fake documents, violate private property, sometimes insult or slander, all as part of the armed uprising. Thus, I would consider it convenient to structure a norm specifying not to punish rebels committing punishable acts in connection with combat.” (Gutiérrez, 1973, Proceedings Penal Code)

The Derecho de Gentes

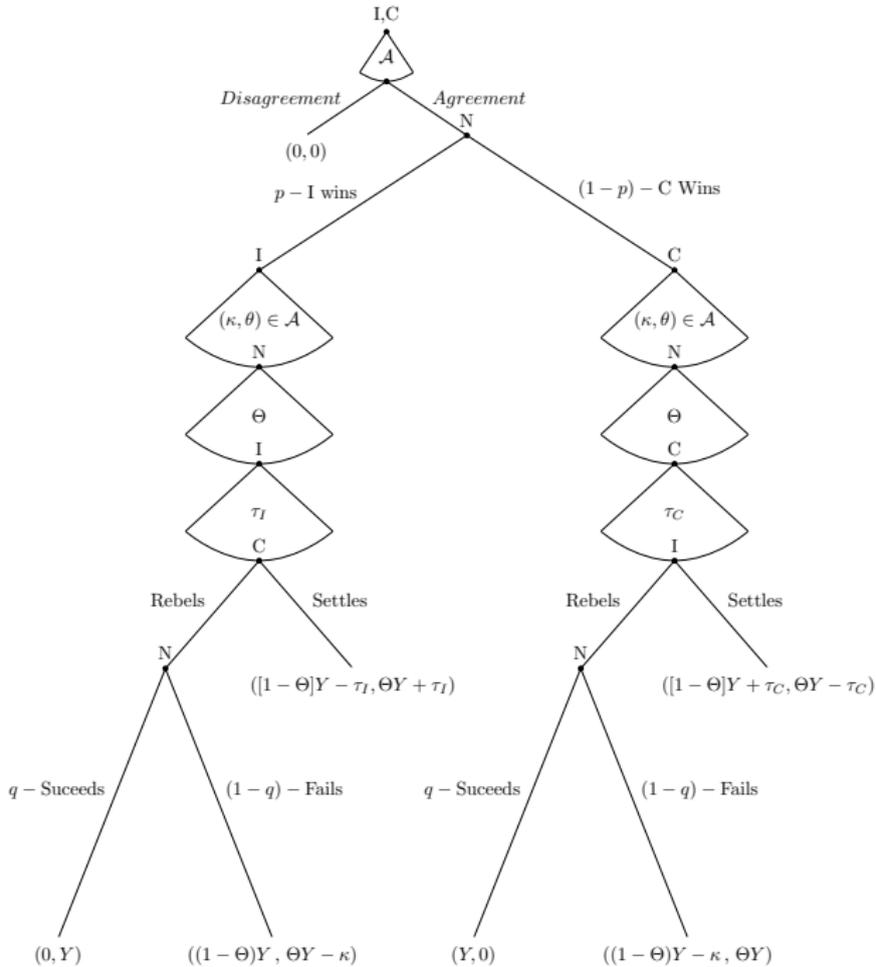
- ▶ Not everyone was in complete agreement
- ▶ “Concerning the norm according to which there is no sanction for rebels who in the context of combat commit homicides or injure others, it is true that its origin can be traced to derecho de gentes, but I think it should not be approved by this Commission... Some ‘romantic’ arguments have been put forth here, but they lack the force to justify a text of this nature.” (Gaitán, 1973, Proceedings Penal Code)
- ▶ What did Dr. Gaitán mean when he referred to the Derecho de Gentes (the “Law of nations”)?

The Roots of the Penal Code

- ▶ The concept of the Law of Nations dates back to Roman times and generally stipulates a set of rights and obligations which govern inter-state relations.
- ▶ Gaitán was referring to Article 91 on the 1863 Colombian Constitution proposed by the Liberal Salvador Camacho Roldán -
“Derecho de gentes is part of the internal legislation of the United States of Colombia, and its norms will rule, especially in the cases of civil war or rebellion. Therefore, these may be finalized through treaties between belligerent sides, who must respect the humanitarian practices of civilized nations.” (2nd version Constitution article)
- ▶ The previous version included the memorable phrase “The United States of Colombia does not recognize political crimes.”
- ▶ Why did Colombians end up with such a different solution to the one the US picked?

A Model

- ▶ Two groups (labeled I and C) negotiate a constitution which sets the institutional limits on two key parameters: one governing resource distribution and another one determining how hard rebellion can be punished.
- ▶ After the constitution is written, an election determines which party comes to power.
- ▶ Then, the resulting incumbent chooses θ , a parameter determining the expected division of resources that the challenger receives. It also chooses the penalty for rebellion (κ).
- ▶ The actual resource distribution ($\Theta, 1 - \Theta$) is then realized and the government can decide to change it via a transfer τ .
- ▶ Finally, the group that lost the election can either accept this (modified) distribution or rebel. Rebellion succeeds with probability q , granting the challenger all income Y . If it fails, the income distribution is dictated by Θ but the rebels must pay the cost (κ) of rebellion.



Timing of the Game

Summarizing, the timing of the game is as follows:

1. Constitutional stage: I and C collectively establish a set \mathcal{A} of possible rebellion costs κ and income distribution parameters θ , where $\kappa \in [0, \bar{\kappa}]$ and $\theta \in [0, 1]$.
2. I wins the elections with probability p , and C with probability $(1 - p)$.
3. The winner party implements a tuple $(\kappa^*, \theta^*) \in \mathcal{A}$.
4. An actual distribution $(\Theta, 1 - \Theta)$ is revealed.
5. The incumbent may alter this distribution by paying an extra to the challenger (denoted by τ).
6. The challenger either rebels or settles for the resulting income share. If the decision is to rebel, then:
 - ▶ With probability q it succeeds and the challenger takes all income Y (normalized to 1 for simplicity).
 - ▶ With probability $1 - q$ it fails and the challenger must pay the costs of rebellion.

Some Assumptions

- ▶ Payoffs are identical and linear in income for both parties.
- ▶ Without loss of generality, we suppose that $p > 1/2$, so that l is the most likely winner of the election.
- ▶ The agreement set \mathcal{A} of implementable pairs (κ, θ) is assumed to be the graph of some monotone, continuous function in the κ - θ plane.
- ▶ We assume that the incumbent can control the mode of the distribution of income, but the actual realization of income is random, we model Θ as a random variable distributed as a truncated normal in the interval $[0, 1]$, centered at θ and with shape parameter σ .

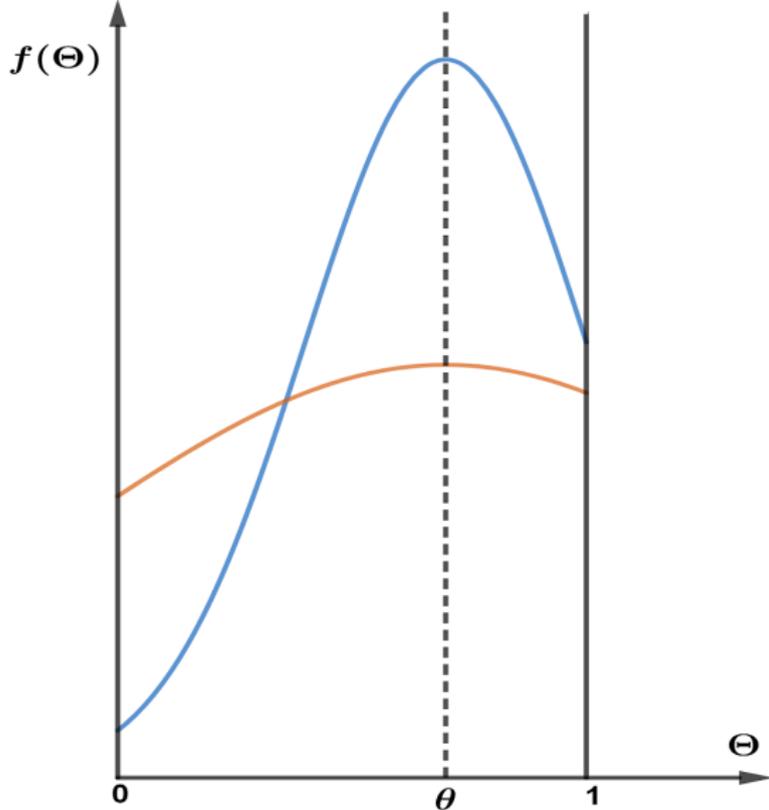


Figure: Probability density function $f(\Theta)$ of truncated normal random variable in the interval $[0, 1]$, with $\theta = 0.7$ and varying σ . The blue curve depicts the case where $\sigma = 0.3$ while the orange curve the case in which $\sigma = 0.8$

Some Observations

Conditional on a promised $\theta^* = \theta$, the expected share of income for party I is:

$$\mathbb{E}[\Theta | \theta^* = \theta] = \theta - \sigma \frac{\phi\left(\frac{1-\theta}{\sigma}\right) - \phi\left(-\frac{\theta}{\sigma}\right)}{\Phi\left(\frac{1-\theta}{\sigma}\right) - \Phi\left(-\frac{\theta}{\sigma}\right)} = \theta - \sigma\Psi(\theta, \sigma)$$

where $\phi(\cdot)$ is the standard normal probability density function, $\Phi(\cdot)$ its cumulative distribution function, and $\Psi(\theta, \sigma)$ is akin to the familiar *Inverse Mills Ratio*. Two important properties for the model are:

- ▶ **Property 1:** $0 < \sigma \frac{\partial \Psi(\theta, \sigma)}{\partial \theta} < 1; \quad \forall (\theta, \sigma) \in [0, 1] \times (0, \infty)$
- ▶ **Property 2:** $-\frac{\partial}{\partial \sigma} (\sigma \Psi(1, \sigma)) < 0; \quad \forall \sigma \in (0, \infty)$

Solving the Model: Rebellion

- ▶ We proceed by backward induction in the last stage of the game, taking both the agreement set \mathcal{A} and the pair $(\kappa, \theta) \in \mathcal{A}$ as given.
- ▶ Given the symmetry of the model, we focus on the case where party I wins. Party C thus observes $\hat{\Theta}_I = \Theta Y + \tau_I$ and will not rebel if and only if:

$$\Theta Y + \tau_I \geq qY + (1 - q)\Theta Y - (1 - q)\kappa.$$

Normalizing Y to one, it follows that rebellion is averted if and only if:

$$\tau_I \geq q(1 - \Theta) - (1 - q)\kappa \equiv \tau_I^*(\kappa, \Theta).$$

Stopping Rebellion

- ▶ It is immediate that it is optimal for either party to set τ to stop a rebellion hence

$$\tau_I^*(\kappa, \Theta) = q(1 - \Theta) - (1 - q)\kappa, \quad (1)$$

$$\tau_C^*(\kappa, \Theta) = q\Theta - (1 - q)\kappa. \quad (2)$$

- ▶ Given these optimal transfers, the effective income distributions when I or C win are described, respectively, by:

$$\hat{\Theta}_I(\kappa, \Theta) = \Theta + \tau_I^*(\kappa, \Theta) = q + (1 - q)(\Theta - \kappa), \quad (3)$$

$$\hat{\Theta}_C(\kappa, \Theta) = \Theta - \tau_C^*(\kappa, \Theta) = (1 - q)(\Theta + \kappa). \quad (4)$$

These expressions show that the realized distribution of income Θ plays an important role in determining the equilibrium allocation. This is because this distribution still dictates the division of resources if a revolution fails.

The Choice of θ and κ

- ▶ We now address the implementation of a pair (κ^*, θ^*) for a given constitution \mathcal{A} . Focusing again in the case where party I holds power, his problem can be written as follows, using the expression for $\mathbb{E}[\hat{\Theta}|\theta^* = \theta]$:

$$\begin{aligned}\max_{(\kappa, \theta) \in \mathcal{A}} U^I(\kappa, \theta) &= \mathbb{E}[1 - \hat{\Theta}_I | \theta^* = \theta] \\ &= (1 - q) - (1 - q) [\theta - \sigma \Psi(\theta, \sigma) - \kappa].\end{aligned}$$

- ▶ Note this is increasing in κ as is $U^C(\kappa, \theta)$. So both actors would like to set κ as high as possible. Since \mathcal{A} is the graph of a monotone, continuous function in the κ - θ plane it follows that there is a unique θ consistent with this.
- ▶ So both parties always choose the same tuple implement $(\kappa, \theta) = (\kappa^*, \theta^*)$ since.

$$\min_{\theta \in \pi_{\theta}(\mathcal{A}; \kappa^*)} \theta = \max_{\theta \in \pi_{\theta}(\mathcal{A}; \kappa^*)} \theta = \theta^*$$

The Constitutional Stage

Definition (Bargaining problem)

The Nash Bargaining Problem faced by party I and party C at the constitutional stage is defined as:

$$\max_{(\kappa, \theta)} J(\kappa, \theta) = [U^I(\kappa, \theta)]^\beta * [U^C(\kappa, \theta)]^{1-\beta} \quad (5)$$

s.t

$$\begin{cases} U^I(\kappa, \theta) \geq 0 \\ U^C(\kappa, \theta) \geq 0 \\ (\kappa, \theta) \in [0, \bar{\kappa}] \times [0, 1] \end{cases}$$

The agreement set \mathcal{A} is defined as all maximizing arguments of problem (5).

Characterizing the Solution

Theorem

All interior maximizing tuples (κ, θ) of Problem 1 satisfy the relation:

$$\theta - \sigma\Psi(\theta, \sigma) = (2p - 1)\kappa + \frac{1 - pq - \beta}{(1 - q)} \quad (6)$$

- ▶ This is the main interesting result for us. We can use the Implicit Function Theorem to think of solutions of Equation (6) as a curve/function in the plane $\kappa - \theta$. We will alternatively denote it as $\theta^*(\kappa)$ or $\kappa^*(\theta)$.

Comparative Statics

- ▶ The comparative statics of (6) can help us understand why the Colombians opted for the Derecho de Gentes.
- ▶ Let me emphasize three properties of $\kappa^*(\theta)$.
- ▶ First, in the $p > 1/2$ case, it is increasing.

$$\frac{d\kappa^*(\theta)}{d\theta} = \frac{1 - \sigma \frac{\partial \Psi(\theta, \kappa)}{\partial \theta}}{2p - 1} = \begin{cases} > 0 & \text{if } p > 1/2, \\ < 0 & \text{if } p < 1/2. \end{cases}$$

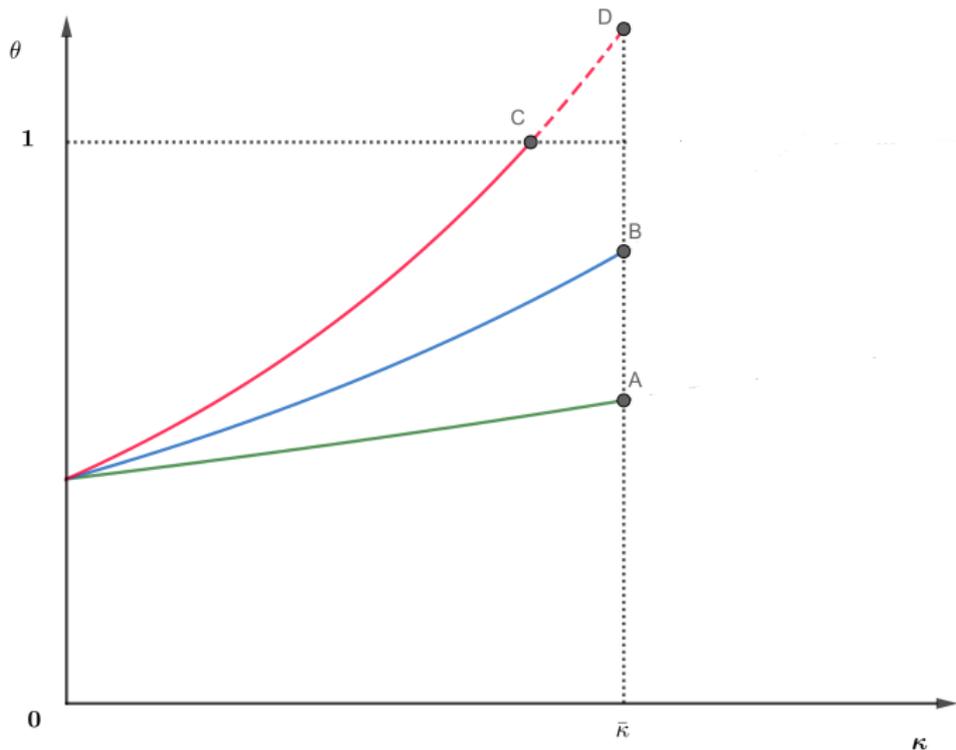


Figure: Hypothetical agreement sets for varying p assuming $p > 1/2$. Each type of line represents a different agreement set. The dotted curve describes the situation with the lowest p , while the filled curve with the highest.

The Impact of Biased Elections

- ▶ Define $\kappa^* = \min\{\bar{\kappa}, \kappa^+\}$. Now
- ▶ Let $p > 1/2$, then

$$\frac{\partial \kappa^+}{\partial p} = -\frac{q}{(1-q)(2p-1)} < 0$$

Moreover, observe that

$$\frac{\partial^2 \kappa^+}{\partial q \partial p} = -\frac{1}{(1-q)^2(2p-1)} < 0$$

- ▶ Higher p shifts up the $\theta^*(\kappa)$ curve. After it hits $\theta = 1$ then higher p reduces κ^* .

The Impact of Uncertainty of Commitments

- ▶ Let $p > 1/2$. Then:

$$\frac{\partial \kappa^+}{\partial \sigma} = -\frac{1}{(2p-1)} \frac{\partial (\sigma \Psi(1, \sigma))}{\partial \sigma} < 0$$

- ▶ An increase in σ reduces the expected share of resources to the challenger, in compensation, once $\theta = 1$ the only way that the payoff to C can be maintained is by lowering the cost of rebellion.

Interpreting the Model

- ▶ The model can help us understand why in the U.S. case the founding fathers believed that the constitution would bring order and sedition was punished by death.
- ▶ While in the Colombian case sedition was anticipated and punished lightly (and there was a lot of disorder in equilibrium!).
- ▶ In the model, it is optimal for both parties to set the highest possible punishment for rebellion, and fix the distribution parameter θ consistent with that.
- ▶ But this solution is only possible when p is not too skewed, or σ not too large.
- ▶ If $p \rightarrow 1$, then C anticipates that I is bound to hold power after the constitution and distort policy in it's favor.
- ▶ If σ is very large, any promise made by I is less credible.
- ▶ In either case the only way that C can be promised sufficient utility at the constitutional stage is by reducing κ .

The U.S. and Colombia: Interpreting p

- ▶ Why would p be so high (or symmetrically low..) in Colombia compared to the U.S.?
 - ▶ There were no political parties in the US at the time they wrote the constitution which I think made everything much more fluid and competitive.
 - ▶ There was much less electoral corruption and fraud in the US and much more of a history of democratic elections.
- ▶ In 1879, the following description could be found in the *Diario de Cundinamarca*:

elections in Colombia are (...) terrible confrontations of press, agitation, intrigue, letters, bribes, weapons, incentives for vengeance, politics, cholera, menace.
- ▶ A contemporary maxim was “el que escruta elige” (he who counts ('scrutinizes') elects).

The U.S. and Colombia: Interpreting σ

- ▶ Why would σ be relatively large in Colombia?
- ▶ Hamilton and Madison believed that since the government was legitimate people would obey the rules.
- ▶ In Federalist 9 Hamilton discusses “The utility of the Union as a Safeguard against domestic faction and insurrection” pointing out that the key is the *de jure* institutional architecture.

The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislatures by deputies of their own election.

Colombians Behaving Badly

- ▶ The situation in Colombia was clearly different.
- ▶ There are three clear arguments
 - ▶ The process that wrote the US Constitution was much more democratic, inclusive and legitimate than the process that wrote the Rionegro constitution. Conservatives immediately started referring to it as “el cuaderno de Rionegao” (the notebook of Rionegro)
 - ▶ The U.S. state had far more capacity (even under the Articles of Confederation) so that it was much more able to implement policies that were chosen
 - ▶ The Latin American tradition of *obedezco pero no cumpro* (“I obey, but I do not comply”). There was and is much more of a culture of ignoring the rules in Latin America and there are even social norms encouraging this - *no sea sapo* (“don’t be a toad”) (As we will see tomorrow, the situation in Islamic parts of the world is very different).

Derecho de Gentes versus Locke's Right to Rebel

- ▶ The US Constitution did not include the Lockean right to rebel (even though Jefferson talked about it).
- ▶ Is the Derecho de Gentes simply this?
- ▶ I would argue not. The right to rebel was a last ditch option for citizens when the constitution was malfunctioning and arbitrary power was being used.
- ▶ Derecho de Gentes (which stayed in the Constitution until 1991) was part of the normal functioning of the constitution. Rebellion was anticipated and normalized. The low cost of rebellion was there to satisfy everyone's participation constraints given the bias in elections and the anticipation that people would not stick to the rules.

The Constitutional Right to Rebel

Countries with the Right to Resist in 1980



Countries with the Right to Resist in 2010



Conclusions

- ▶ The deviation of Colombian constitutionalism from the main western tradition is relatively small relative to what we'll see in the next two days.
- ▶ But it knocks a big hole in that tradition. The basic issue for Hobbes and for Madison and Hamilton was an institutional design that would provide order and avoid Warre.
- ▶ Instead, the Colombian constitutions normalized and domesticated Warre.
- ▶ The type of solution that Madison and Hamilton proposed couldn't achieve its objectives in the Colombian context.