



## Reviews

STEFAN VOIGT (1999) *Explaining Constitutional Change: A Positive Economics Approach*. Cheltenham, UK: Edward Elgar, 250 + x pp., \$90.00

Constitutional economics is a relatively young subdiscipline that stands on two main pillars: the contractarian approach advocated by James Buchanan, and the efficient evolution of institutions approach promoted by Friedrich Hayek. Voigt finds merit in both approaches, but also finds significant drawbacks to them both. Building on the ideas of Buchanan, Hayek, and others, Voigt offers in this volume a framework for developing a positive theory of constitutional change.

Voigt does not attempt to explain the origin of constitutional rules, but rather how constitutions change over time, and in this way is closer to Hayek than to Buchanan. Buchanan, as well as Nozick and Rawls, have offered theories about how constitutional rules come into being, and what makes them legitimate. Voigt starts from that point, and wants to explain how the constitutional rules that do exist can evolve over time. As Voigt depicts it, constitutional change is the result of a bargaining process between rulers and various opposition groups. People in this bargaining process act to further their own self-interests. Rulers want to extract surplus from their citizens, and citizens want to consume government production at minimum cost. How much surplus government actually can extract from its citizens depends upon the bargaining strength of those citizens. When conditions change, that can alter the relative bargaining strength of rulers and of various groups of citizens, and when the relative bargaining strengths of groups change, constitutional change can occur.

In keeping with the literature, Voigt means by a constitution the structure of generally accepted rules within which people in a nation interact. Some constitutional rules may be written down, as with the U.S. Constitution, but the bulk of a constitution will be unwritten but generally agreed-upon rules for collective action and for individual interaction. Voigt develops his theory in very abstract form, but provides historical examples to illustrate his points. The history helps illustrate how his theory might be applied to the real world, but falls short of representing an empirical test of his theories. And Voigt does make it clear that his ultimate goal is to develop an empirically testable theory of constitutions.

Voigt's constitutional vision emphasizes the distinction between internal and external institutions, and some of his best insights fall out of this distinction. Internal institutions are enforced by the members of a society, and include social norms, rules of conduct, and perhaps even some types of political behavior. External institutions are those that are enforced by the state. Voigt makes the argument that the success of external institutions depends upon having the right framework of internal institutions. Thus, while many Latin American governments established written constitutions that closely resemble the United States Constitution, Latin American governments have not worked like the U.S. government in practice because those nations did not have the same foundation of internal institutions

as the United States. External institutions can be designed and implemented by the state, but internal institutions evolve on their own, and cannot be imposed on people.

This distinction has a number of implications. Most obviously, Voigt argues that if one is trying to design an external constitution for a nation, the most appropriate constitutional rules will depend upon the internal institutions that characterize the nation. Religious and social institutions, as well as other social norms, vary substantially among nations, meaning that constitutional rules that work well in one nation may utterly fail in another. One cannot design constitutional rules one at a time, because various constitutional provisions interact with one another, so the entire package of internal and external constitutional rules must be evaluated together. However, the internal constitution is probably more important—and more difficult to change—than the external constitution, so any design for an external constitution must account for the internal institutions already in place.

Voigt's emphasis on the importance of internal institutions leads him to a rather pessimistic outlook for constitutional reform. As the world develops, many nations look to wealthier nations in an attempt to emulate those institutions that have brought freedom and prosperity, but Voigt argues that one cannot just impose a Western constitutional government on a nation that does not have the right social norms. Voigt says (p. 101) "... that society's capability of intentionally and rationally designing a new constitution having good chances of becoming effective is severely restricted." This points directly to the question of how nations might modify and improve their internal institutions, but Voigt leaves this important question unaddressed.

The importance of internal institutions leads Voigt to criticize Hayek's attempts at constitutional design as inconsistent with his own theories. Voigt describes Hayek as an evolutionary optimist. Complex institutions that evolve as a result of human action but not of human design are more effective than the necessarily simpler institutions created by plan, and those complex institutions that have evolved over time work in ways that nobody can completely understand. Because of all of the poorly understood nuances that make complex institutions effective, one must be reluctant to tamper with them. Hayek wants to design a better constitution, but the problem is that if we really do not understand how institutions function, how can we improve them? Hayek's well-known argument is that institutions that work better displace institutions that function less well. How can Hayek celebrate the evolutionary efficiency of institutions as being beyond the comprehension of any one individual, and yet at the same time want to create better institutions by human design?

As a case in point, Hayek is pessimistic about democracy, arguing that democracy tends to decay into a dictatorship by the majority, but there is an apparent contradiction in this idea. Because democracy has displaced other forms of government, Hayek's argument about democracy seems to imply that less efficient political institutions have displaced more efficient institutions, contrary to Hayek's notion of efficiently evolving institutions.

In contrast to Hayek, Voigt likes democracy, and sees it as a way to overcome the principal-agent problem, because people can exchange current political leaders for others who more share their vision of the constitutional contract. Here again, the distinction between internal and external institutions plays a big role. External constitutional rules are subject to interpretation. Without altering the words of the constitutional document, those rules can evolve by actions on the part of those in government, but in a democracy, government

is policed by voters, and internal institutions can shape the external institutions as voters choose representatives who share their constitutional vision.

Voigt is critical of Buchanan's contractarian approach to constitutional design, so when he develops his own framework that is based on contracts between rulers and citizens, he is careful to note that he is referring to actual contracting among people, and not to a hypothetical contract that could conceptually receive unanimous approval. Buchanan's unanimity provision ensures that his social contract is built on Pareto improvements, but Voigt does not want to develop a theory based on Paretian or any other norms. He wants to develop a positive theory, by which he means a theory that is descriptive of reality and is empirically testable.

Voigt sees another problem with Buchanan's approach. Buchanan's social contract is intended to force people to respect each others' rights, because in the absence of such a contract people would be thrust into Hobbesian anarchy. But if people cannot trust each other to respect their rights in anarchy, how can they trust other parties to abide by the terms of the contract? Buchanan's answer to this is to form a government to enforce the contract through external institutions, precisely because everybody cannot be trusted to obey the rules. Buchanan recognizes that the resulting government must be carefully designed or it will overstep the limits of its power, but this does not appear to be what Voigt was referring to regarding lack of trust. In light of Voigt's criticisms, it would have been interesting to see him follow up on this idea.

In Buchanan's constitutional framework, unanimity serves as the benchmark for the constitutional contract, but in Voigt's framework unanimity is not necessary because not everybody has sufficient bargaining power to alter the constitution. People get bargaining power by having productive services to offer others, or by having the power to disrupt a constitutional structure that does not meet with their agreement. Herein lies the basis for constitutional change in Voigt's model. When the bargaining strengths of groups are altered, the constitutional contract evolves to better represent the interests of those with more bargaining power.

Voigt has devoted his book to developing ideas on constitutional evolution, but in Voigt's framework the economic interests of participants are decisive, and there is little room for the influence of ideas. John Maynard Keynes once said about ideas that the world is ruled by little else, but in Voigt's framework it is interests, not ideas, that rule the world. Do Voigt's own arguments imply that the ideas in his book is of minimal importance? Constitutional scholars may be interested in understanding the process of constitutional change, but as Voigt sees it, there is little that constitutional scholars can do to affect the process. Internal institutions are vitally important, but are largely outside the control of human intervention, and economic interests are largely decisive in constitutional evolution anyway. The constitutional scholar can observe the process of constitutional change, but human intervention can have only a minimal impact on the process. Despite the fact that Voigt's theory points in this direction, one can easily think of examples—the 18th century United States and 20th century Japan are two—which suggest that human intervention can have a major impact on a nation's constitution.

Voigt wants to develop a positive framework for explaining constitutional change, and in large part he succeeds. His emphasis on internal versus external institutions—social norms

versus law—is a good insight on which he bases much of his analysis. When Voigt says he wants to develop a positive theory, he means an empirically testable theory, and by Voigt's own admission, what he presents in his book is only a start. His model is positive, as opposed to normative, but the framework is not well-enough developed that any empirically testable hypotheses come out of it. The empirical sections of Voigt's book consist of a recounting of historical episodes of constitutional change that are consistent with his model, but in an ad hoc manner. Variables in Voigt's model do not correspond with real-world data closely enough to ensure the reader that there are really falsifiable hypotheses, and the reader could easily wonder if there are not other historical examples that appear to contradict the model.

The book is genuinely thought-provoking, and prompts the reader not only to envision constitutions in his framework, but to imagine how that framework could be developed further. After an insightful review of the literature, Voigt does a nice job of integrating the best ideas from the contractarian and evolutionary approach to constitutions. Voigt admits that he falls short of his own goal of producing a positive theory of political change. What he really offers is a way of thinking about constitutional change rather than any grand conclusions. Still, scholars interested in understanding the evolution of political institutions will find much of value in this volume.

**Randall G. Holcombe**

Florida State University