

# Does Parchment Matter? An Empirical Test

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## Abstract:

Despite much theoretical discussion the enforceability of constitutional constraints, the question has received little empirical attention. After discussing the theoretical arguments for and against the proposition that constitutions are capable of protecting individual liberty against encroachment by the state, I use the Reporters without Borders index of press freedom and a content analysis of national constitutions to ask whether constitutions protect freedom. I find that, controlling for a number of other factors, constitutional prohibition of censorship is correlated with greater press freedom, and that constitutions seem to be most effective at times when liberty is most at risk. Vague constitutional guarantees of press freedom, on the other hand, seem to have little effect. While the results indicate that parchment does matter, constitutions should not be seen as binding rules which preclude particular actions by government, but as constraints which reduce the likelihood of certain political outcomes. The results reveal both the strengths and limitations of the constitutionalist project of James M. Buchanan and other public choice scholars.

## 1. Introduction

Government ostensibly exists to prevent private predation of the weak by the strong and the few by the many. In many cases, though, government becomes the instrument of predation by either political elites or majorities. Using evil (institutionalised violence) to do good (prevent private violence) is necessarily a Faustian bargain (V. Ostrom, 1984). Constitutionalism is essentially an attempt to mitigate the danger of this bargain by limiting the scope for government to act as a tool of predation. The extent to which constitutional controls can constrain government, though, is far from clear. Some constitutionalists seem to take government respect for constitutional rules as axiomatic; some non-constitutionalists see government power as fundamentally unbounded.

The purpose of this paper is to empirically test the degree to which constitutional constraints can limit the power of government. Are constitutions mere parchment barriers which can be broken at the whim of those with political power, or do they act as genuine constraint? If the latter, what is the mechanism of this constraint, and under what conditions will constitutions prove effective? While there is strong evidence that structural constitutional variables such as bicameral legislatures and voting rules feed through to policy outcomes, the study of substantive constraints such as those of the American *Bill of Rights* has received much less attention. This paper is concerned with such substantive rules.

This paper will proceed as follows. Section 2 will make the case that the constitutional project is premised on a desire to protect against the worst possible outcomes. Section 3 considers various theoretical arguments for and against the proposition that parchment protects freedom, as well as arguments about when it is likely to do so. This section also describes empirical findings where relevant. Section 4 outlines the empirical strategy of this paper, which involves using an OLS regression to test whether constitutional guarantees of press freedom or prohibitions of censorship have an effect on actual levels of press freedom as measured by Reporters without Borders. Section 5 presents the results, which show that parchment does matter and seems to matter most in times when press freedom might otherwise be restricted. Section 6 concludes by discussing what these results tell us about the standard approach to constitutional political economy.

## 2. Constitutionalism as Worst-Case Political Economy

The standard assumption in political economy is that the state of nature is characterised by chaos.<sup>1</sup> Absent enforceable rights, each individual has an incentive to predate rather than produce. Each

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individual would prefer to live in a world in which rights and liberties are respected, but they are stuck in an n-person prisoner's dilemma. Hobbes argued that the only solution to this problem is to grant a monarch absolute power. This Leviathan would likely be predatory, but the order it produced would be preferable to chaos.

While some totalitarian governments approximate the Leviathan model of a small elite preying on the population at large, most predation in industrial democracies involves a large alliance of citizens using the machinery of the state to pursue its interests at the expense of some other group.<sup>2</sup> This puts political actors right back in an n-person prisoner's dilemma: everybody would prefer a world in which government could not be used for predation, but the incentives of the political system do not allow this to happen. The only difference between Hobbesian anarchy and Hobbesian government is that rent-seeking replaces the direct use of force: lawyers and lobbyists replace guns (Wagner & Gwartney, 1988, p. 36).

Constitutionalists argue that we can escape Hobbesian government by agreeing to meta-rules which define how collective decisions are made and limit the scope of government action (Brennan & Buchanan, 1999, 2000; Buchanan, 1975; Buchanan & Tullock, 1962). Whereas everyday politics is characterized by conflict, incentives at the constitutional level are aligned. Constitution-makers are in a position similar to players in a card game before the cards are dealt: each would prefer rules which stack the deck in their favour, but since nobody knows what concrete rules will benefit them personally, each will prefer neutral rules which maximize aggregate welfare.

The constitutional project is premised on the notion that politicians and other political actors cannot be trusted to promote the general interest. James Madison took this position in *Federalist* 51:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This approach – assuming the worst when analyzing political institutions – has been dubbed “robust political economy” or “worst-case political economy.” A number of scholars in the public choice and Austrian schools of economics have recently taken this approach (Anderies, Janssen, & E. Ostrom, 2004; Beaulier & Subrick, 2006; Boettke & Leeson, 2004, 2006; Boettke, Coyne, Leeson, & Sautet, 2005; Boettke & López, 2002; Boettke, 2000; Brennan & Buchanan, 1981, 1983, 1999, 2000; Crampton & Farrant, 2004, 2006a, 2006b, 2008; Farrant, 2004; Farrant & Paganelli, 2005; Janssen, Anderies, & E. Ostrom, 2007; Leeson, Coyne, & Boettke, 2006; Leeson & Subrick, 2006; Levy, 2002; Levy & Peart, 2006; Skarbek, 2010; Subrick, 2006; Taylor, 2010; Taylor & Crampton, 2009; Voigt, 2006; Wagner, 2006; Walsh, 2005), but the central idea can be identified in the work of David Hume (1739), Adam Smith (1759, 1776), John Stuart Mill (1869, 1903), and F.A. Hayek (1948). Mill's warnings against naïve confidence in human nature are a good example:

Whether the institution to be defended is slavery, political absolutism, or the absolutism of the head of a family, we are always expected to judge of it from its best instances ...Who doubts that there may be great goodness, and great happiness, and great

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<sup>1</sup> While there is a large literature arguing that orderly anarchy is possible and preferable to the situation in which one institution is granted a monopoly on the legitimate use of force (Friedman, 1989; Powell & Stringham, 2009; Rothbard, 1973; Stringham, 2007), I will take the standard assumption of Hobbesian anarchy as given for the purpose of this paper.

<sup>2</sup> James Madison (1788) insists that “the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents.” In *Federalist* 51, he says that when “the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature.”

affection, under the absolute government of a good man? Meanwhile, laws and institutions require to be adapted, not to good men, but to bad. (Mill, 1869)

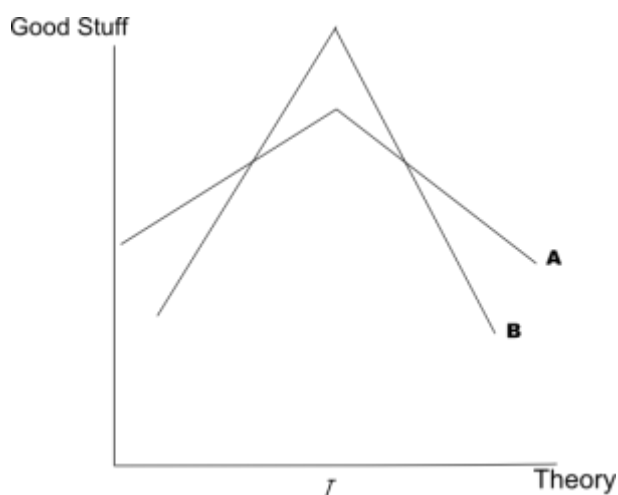
The common theme which unites these thinkers is the importance of distinguishing between the empirically best model of reality and the most prudent model for institutional evaluation, with the latter being systematically more pessimistic than the former. Brennan and Buchanan (1999, pp. 59-61) use the example of hiring a contractor to perform some work. In doing so, we will normally attempt to ensure that we are dealing with an honest person. When drawing up a contract, however, we make the working assumption that he is dishonest and will defraud us if given the opportunity. Despite the fact that we don't believe this to be true, we must assume so for the sake of contract-making, since dishonest behaviour is exactly what formal contracting is meant to guard against. A contract written with an honest tradesman in mind will fail to serve its essential purpose, and will be just as effective as no contract at all.

Similarly, even if we have no reason to think that people will use the power of the state to pursue their selfish ends or that the majority will oppress minorities, it is prudent to choose constitutional rules on the basis that this is the case. Protecting against tyranny is, after all, *the entire point* of the constitutional exercise. Writing a constitution is like purchasing insurance: we do not need to assume that things will go wrong to rationally take steps to mitigate harm (Brennan & Buchanan, 1999, p. 62).

David Levy (2002) likens Brennan and Buchanan's insights on worst-case theorizing to John Tukey's theory of robust statistics. A statistical technique is robust if it continues to perform well when its central assumptions, such as normality of the data, are false. Similarly, a political institution is robust when it continues to perform well when its assumptions, such as benevolent human nature, are false. Levy offers a simple diagram representing the relative performance of political institutions as a function of the theoretical assumptions made about the world. The measure "Good Stuff" (Levy's term) is a generic metric which could represent welfare, equality, liberty, etc or any weighted combination of various desirable outcomes. The point *T* represents the best-case scenario. As we move away from this point, the state of the world is less conducive to producing good stuff. The "State of the World" metric could measure any variable which affects the performance of political institutions, such as the degree of self-interested behaviour.

Choosing a robust institution often comes at a cost. Absolute government power, for example, is preferable to constrained government when governors are benevolent. This changes dramatically with self-interested rulers. Insurance against tyranny must be paid for by preventing benevolent government from having full power. In the above graph, the cost of choosing institution A is the good performance of institution B close to *T*.

Figure 1: Levy's model of institutional robustness



### 3. Are Constitutional Constraints Binding?

Accepting that the constitutional level of choice will lead to optimal rules,<sup>3</sup> the question remains whether such rules can be enforced. At this point, it is important to distinguish between structural and substantive constitutional rules. Structural rules seek to distribute political power in such a way as to limit the power of faction; such as federalism, the separation of powers, bicameral legislatures, and electoral procedures. Madison was clearly interested in structural constitutionalism when, in *Federalist* 51, he argued that “[a]mbition must be made to counteract ambition.”<sup>4</sup> There is strong evidence that structural constraints have a significant influence on policy outcomes (De Vanssay, Hildebrand, & Spindler, 2005; De Vanssay & Spindler, 1994; Haggard & McCubbins, 2001; Persson & Tabellini, 2004; Spindler & Vanssay, 2002).

Substantive constitutionalism, on the other hand, seeks to limit the legitimate actions of government by formal decree, explicitly defining a public and private sphere and protecting the latter from interference. The American *Bill of Rights* is the most celebrated example of substantive constitutionalism. Much of the normative force of constitutionalism comes from substantive constraints. It is only this type of constraint which can “define the relative spheres for private and governmental action” (Buchanan, 2001, p. 45). A sufficiently large majority in favour of abrogating property rights or freedom of religion, for example, will always be successful unless there is some way to sequester these freedoms away from the influence of collective choice. Only substantive constraints have the potential to do this.

The effect of substantive constraints is less obvious than that of structural constraints. Substantive constitutional rules are themselves only marks on paper. Unless they are enforced or internalised by political actors, they will have no effect. James Madison clearly recognised this. In his letter to Thomas Jefferson, Madison (1788) expressed a reserved endorsement of a bill of rights but insisted that the exclusion in the original constitution was not a “material defect” and felt no pressing need, save the opinions of others, to enumerate basic rights via amendment, since such enumerated rights will be incapable of preventing abuses of power whenever such abuse is demanded by the public.

#### 3.1. Mere Parchment?

A number of public choice theorists have pointed out that if substantive constraints on government power are to be considered binding rules, they must be enforced (de Jasay, 1989; Tullock, 1987; Wagner & Gwartney, 1988). It is all very well to insist that government is not above the law, but when government interprets and enforces the constitution, it is difficult to see how law could prevail when the political wishes of government and the legal stipulations of the constitution conflict.

De Jasay (1989) 1989) argues that if the dominant forces of society, as represented by government, desired some outcome unattainable under the existing constitution, there is nothing preventing them from simply using another constitutional rule and having their way. Government is only limited by constitutional rules if it accepts and abides by them, and a rule which is only binding when one decides to obey it is no rule at all. Anything more substantial would require a rule “that is representative yet stands above interests, decisive yet benign, conflictual yet unanimous, square yet round” (de Jasay, 1989, p. 299). Tullock (1987) insists that any durable effective constitution must be self-enforcing and sees no way of creating self-enforcing substantive rules.<sup>5</sup>

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<sup>3</sup> There are a number of reasons to doubt this, however. It seems unlikely that the veil of uncertainty will be sufficiently thick to prevent lobbying by special interests. McGuire and Ohsfeldt (McGuire, 1988; McGuire & Ohsfeldt, 1986, 1989) analyse the founding of the US constitution from an interest group perspective, finding that delegates voted in line with their constituents economic interests. Parham (2010) argues that interest groups are likely to have undue influence over any Australian charter of rights. Further, the choice among rules may be more subject to expressive concerns than choice within rules (Brennan & Hamlin, 2002; Crampton & Farrant, 2004). If either of these factors come into play, the constitutional level of choice will fail to align incentives.

<sup>4</sup> Madison was presumably influenced by Montesquieu (1989) and Hume (1875).

<sup>5</sup> Laffont (2000) uses contract theory to formulate mechanisms designed to limit the principal-agent problems between the voting public and government. While this line of thinking may offer ways of ameliorating the problems of rent-seeking and other forms of bureaucratic slack, it does not address the central problem of this paper: factions of the voting public using the machinery of the state to repress each other. Some substantive constraints may be self

Bargains struck at the constitutional stage can later be violated in a number of ways. In the most extreme case, the constitution can simply be ignored or discarded. If the preferences of legislators conflict with the constitution and neither the public nor other branches of government are willing and able to punish violation, the chances of constraint seem slim. Another possible avenue for large majorities determined to perform acts forbidden by the constitution is amendment, though many constitutions erect significant barriers to amendment.<sup>6</sup>

Even if a constitution remains intact and commands the professed allegiance of political actors, however, constitutional agreements can be undermined through interpretation and manipulation. Since laws never provide unambiguous guidance for action, the effective constitution can change over time. Voigt (1999) suggests that constitutions are subject to “implicit change.” The effective constitution emerges from the strategic interaction of different branches of government, interest groups, and the public; each of whom has different preferences over policy. Ackerman (1991) argues that there have twice – in the 1860s and 1930s respectively – been significant changes to the effective constitution of the United States without alteration of the text.

Despite much theoretical discussion of whether parchment barriers can constrain government behaviour, the question has been empirically neglected, with only a handful of studies investigated the effect of substantive constitutional constraints statistically or econometrically. Boli-Bennett (1976), Pritchard (1986), and Blasi and Cingranelli (1996) each conduct bivariate analyses of the relationship between constitutional protections and respect for human rights. The results of these studies were mixed, and their failure to include controlling independent variables severely limits their value. Endersby and Towle (1997) find that controls on spending written into the constitutions of U.S. states are ineffective or counterproductive.

Cross (1999) finds that structural factors influence respect a government shows for human rights but found no relationship between explicit constitutional provisions and state human rights behaviour. Keith (2002) and Keith et al (2009) study the effect of various substantive constitutional provisions on levels of “state terror” (killings, political imprisonment, torture, disappearances, etc), finding that provisions to fair and public trials significantly protect human rights. Spindler and de Vanssay (2002) found that the constitutional guarantee of freedom of *religion* was associated with greater *economic* freedom. They suggest this relationship is mediated by the role of religious pluralism in maintaining effective political pluralism. Davenport (1996) finds that constitutional provisions regarding freedom of the press and states of emergency political repression decrease political repression. Interactions between these constitutional provisions and political conflict suggest that these provisions protect against repression more strongly in times of conflict.

While these studies are important contributions and considered as a whole seem to support the hypothesis that parchment matters, more study is needed. Few have considered whether constitutional provisions have an effect on the particular state behaviour they are designed to limit. Apart from Davenport’s discovery of an interaction between conflict and constitutional protection, nor have they looked closely at *when* parchment matters.

### 3.2. Fair Weather Protection

Even if constitutions are binding in normal times, they may lose power during times of crisis. Higgs (1988) argues against a simple view of the constitution as existing merely as words on paper. There are, he argues, three loci of the constitution. The *de facto* constitution arises out of constitutional document itself, what the court says it is, and what the public thinks it is (Higgs, 1988, pp. 374-376). The third locus depends on the dominant ideology within society. Since this changes during times of emergency, it makes sense to think of a distinct “crisis constitution,” which comes into effect even as the written document

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enforcing if respected initially. The pluralistic religious culture of the United States (Iannaccone, 1991) helps prevent any single religious faction from reducing the religious freedom of others. This pluralism could be partly attributable to the first amendment of the constitution.

<sup>6</sup> For positive analyses of constitutional amendment, see Boudreaux and Pritchard (1993) and Lutz (1994).

remains unchanged. In times of perceived crisis, the voting public will often demand restrictions on liberty in the name of safety. Politicians, being agents of voters subject to electoral discipline, will respond to this demand. Courts may declare policies unconstitutional, but there are strong incentives against judicial activism in times of crisis, with courts not bending to popular preferences facing the possibility of being ignored and having their legitimacy undermined. The judicial branch will therefore be reluctant to stand up to legislature in times of emergency. This, says Higgs, is exactly what we see in the historical record (Higgs, 1988, pp. 378-379).

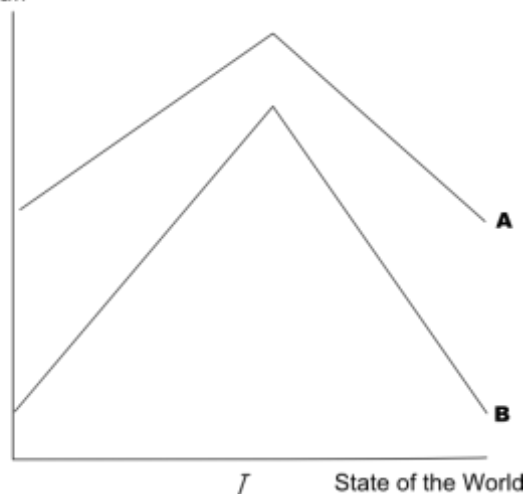
If Higgs is correct, the constitution loses its binding force precisely at those times it is most needed. History shows us that crises of various sorts tend to lead to the expansion of government and the abrogation of liberty (Higgs, 1987, 2006, 2007). This hypothesis is obviously at odds with the insurance metaphor of the constitution, since the constitution is designed to protect against the worst forms of excessive government, just insurance is meant to pay off in the case of unexpected disasters.

Farrant (2004) and Farrant and Paganelli (2005) argue that while Buchanan's constitutionalism professes to engage in worst-case theorising, it allows best-case thinking in through the back door by assuming constitutions are always respected and enforced. In fact, constitutional constraints are only "contingently robust," since the effectiveness of a political institution depends on its enforcement. While Brennan and Buchanan, along with other constitutional political economists, vigilantly engage in worst-case theorising at the level of everyday politics, they are naïve best-case thinkers at the constitutional level. Something must enforce constitutional rules. Whether this is the government proper or some quasi-independent agency, it is unreasonable to assume its benevolence.

### 3.3. Robust Constitutions

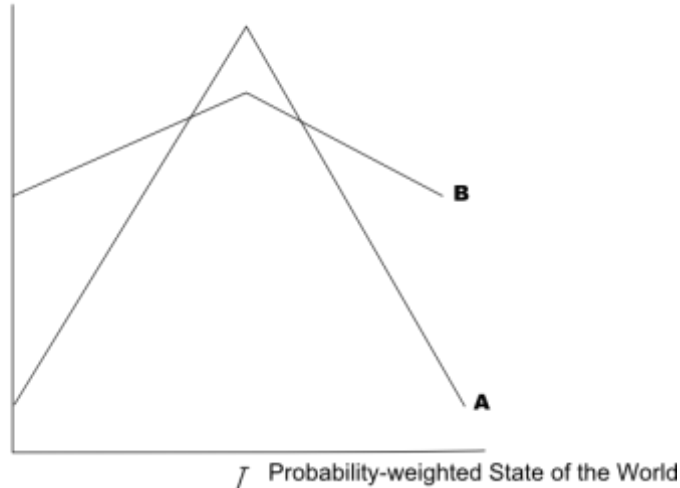
The arguments against constitutional enforceability presented above are powerful. Constitutions are ultimately nothing more than words on paper and there is no external arbiter to hold government to its promises. Experience tells us unequivocally that constitutional constraints are not absolutely binding: governments frequently break their own rules. Effective constraints, however, need not be absolute. It is possible that constitutions protect against the worst outcomes not by being the last line of defence against tyrannical interest and power but by making interest and power less tyrannical. If we wish to compare the ability of bound and unbound government to avoid disaster, it is not simply the *badness* of the worst outcome which is relevant but also the *probability* of that outcome. Levy's analogy with robust statistics suggests that the probability of a given state of the world is independent of political institutions. This is clearly not the case. This can be shown by using a slightly modified version of Levy's diagrammatic representation of robustness. Taking an extreme case to illustrate the point, Figure 2 shows institution B as completely dominated by A.

Figure 2: A Dominated Institution  
Good Stuff



If the horizontal axis is used to represent a state of the world weighted by how likely it is under a given political institution, however, a very different result could be observed. Now the further we are from  $T$ , the less likely that state of the world is to hold. Suppose that the state of the world was much more likely to remain close to ideal conditions under institution B. This would vertically flatten and horizontally stretch B relative to A. With enough of a difference in probability, something like Figure 3 could result. Now institution B seems more robust than institution A. Taking probability into account is surely a better measure of robustness than simple unweighted states of the world.

**Figure 3: Dominated No More Good Stuff**



In the very worst case, institutional variables do not matter at all. As Aristotle (*Politics*, Book 7, Part IX) puts it, “those who carry arms can always determine the fate of the constitution.” Absolute knaves will ignore rules completely and rules will be irrelevant. Institutions which reduce the probability of very bad states of the world are more robust those that do not, even if it performs as badly in those states of the world.

There are at least two plausible mechanisms through which mere parchment could reduce the probability of tyranny even under particularly bad states of the world. First, parchment barriers may be effective when enforced through a separation of powers. Second, parchment may influence public opinion.

### 3.3.1. Parchment Backed by Structure

The most obvious mechanism is judicial review: if courts decide whether constitutional rules have been violated, we have a quasi-independent agency to check the power of the legislature. Contra de Jasay, the judicial branch designed to limit legislative action does not itself have unbridled power, since each party could provide a check on the other. Alexander Hamilton makes the case in *Federalist* 78 that effective judicial protection of the constitution requires independent judges with respect for the constitution. This, he argued, would provide a check on “occasional ill humors in the society” which may produce legislation inconsistent with constitutional principles. This would make parchment, when backed by an independent and appropriately motivated judiciary, a robust protector of individual rights.

Unfortunately, there is reason to doubt the ability and willingness of the court to act in this way. Hamilton admits that judiciary “has no influence over either the sword or the purse” and would rely on the executive branch for enforcement. It is possible that the legislature and executive would simply ignore the rulings of courts and proceed to enforce unconstitutional laws. This seems especially likely in times of crisis and when a majority of the population are against strict enforcement of the constitution – times of ill humor. Knowing that they may be ignored, courts may refrain from constitutional activism for fear of losing legitimacy (Higgs, 1988, pp. 378-379). The judicial branch may then become an agent of the legislature, *increasing* its power by providing legitimacy through an apparent but ineffective separation of powers.

Further, courts are not immune to the ill humors which threaten to undermine constitutions. Whereas Buchanan (1974, 1988) and other constitutionalists often see courts as impartial guardians of the constitution, the evidence seem to suggest that courts are responsive to public opinion. Marshall (1989) finds that three fifths of United States Supreme Court's decisions are majoritarian, and half of its judicial activism (i.e. the striking down of legislation) is majoritarian. Its decisions are especially majoritarian in times of crisis (Marshall, 1989, chap. 4), and agreement with majority opinion increases the stability of decisions (Marshall, 1989, chap. 7). This suggests that the Supreme Court is no less majoritarian than other government policymakers such as houses of legislature and the president. Mishler and Sheehan (1993) find that decisions of the Supreme Court between 1956 and 1980 are responsive to changes in public opinion and the preferences of congress and the president.<sup>7</sup> This should not be surprising, since judges are not immune from political pressures and are themselves part of the society which occasionally becomes ill humoured.

Judicial review may be effective in providing an additional veto point in the enforcement of legislation which conflicts with the constitution. Judges may be appointed based on majoritarian grounds, but since they generally enjoy tenures longer than those of politicians, we can think of them as an additional, very specialized, house of legislature elected through a different mechanism. Along these lines, Landes and Posner (1975) argue that an independent judiciary with life tenure allows interest-group deals struck through legislatures to survive after the legislature has been replaced. The Supreme Court, then, is an agent of current as well as past legislatures. This has the potential to protect the interests of those formerly within the ruling coalition but now outside it; thus providing a check on majoritarian power. Since judges only have the power to strike down legislation which they can argue is inconsistent with the constitution, substantive rules combined with judicial review could lower the cost of protecting the private sphere for those who wish to do so.

### 3.3.2. Constitutions and Public Opinion

Madison (1788), generally sceptical of parchment barriers, points to an important means through which bills of rights could protect against the dangers of faction.<sup>8</sup> Madison saw the constitution as having an important role in shaping public opinion (C. A. Sheehan, 1992, 2005).<sup>9</sup> In his letter to Jefferson, he made this quite clear: "The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion." If the public sees the constitution as possessing legitimate authority, its substantive provisions may influence voter preferences and therefore policy outcomes.<sup>10</sup> The most obvious example of this is the second amendment to the U.S. Constitution. The constitutionally protected right to keep and bear arms has provided a powerful political argument to those opposed to gun control.

If constitutions do influence public opinion, it is natural to ask when they do so. Higgs (1988) suggests that panic among citizens will undermine adherence to constitutional principles just when they are most needed. Adherence to the constitution is a luxury which will be abandoned at the first sign of trouble. Higgs is correct that crises will tend to produce spikes in illiberal preferences capable of producing illiberal policy, but it is unclear whether this means that constitutional constraints will be useless in times of crisis.

The punctuated equilibrium literature in political science has documented rapid changes in those issues accepted as being on the political agenda (Baumgartner & Jones, 1991, 2009; Kingdon, 1984; True, Jones, Baumgartner, & Sabatier, 2009). Policy will normally be characterized by negative feedback and exhibit a

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<sup>7</sup> Between 1981 and 1989, however, they find no such relationship. They explain this change by pointing to a string of conservative appointments.

<sup>8</sup> Madison also argued that substantive constraint could provide a focal point around which citizens could organize resistance to tyranny. Weingast (2005) makes a similar argument.

<sup>9</sup> Caplan (2005) makes a similar argument in a blog post.

<sup>10</sup> The empirical evidence suggests that policy outcomes track public opinion fairly closely (Althaus, 2003; Bryan Caplan & Stringham, 2005; Crampton, 2002; Page & Shapiro, 1983)

large degree of inertia. Occasionally, though, an issue captures the public's attention. This leads to a situation in which positive feedback comes to dominate and we see large shifts in preferences and policy. Moral panics (Cohen, 1972; Goode & Ben-Yehuda, 1994) also involve rapid changes in public understandings and policy preferences. According to Cohen, moral panics involve a salient event shifting the public attention to some supposed threat to existing ways of life. Images of danger lead to a snowballing of public attention and frequently results in regulation as political elites recognise the political opportunity present in such panics.

The tendency for preferences to become self-reinforcing at the population level at certain points in time has recently been studied by scholars in law and economics. The public availability of expressed opinions can lead to cascades of stated opinions. Kuran and Sunstein (1999) offer an overview of these arguments and relate them to risk regulation. "Availability cascades" come in two basic forms: reputational and informational. Reputational cascades occur when people keep quiet or actively falsify their preferences in order to secure social benefits or avoid social costs. As more people come to conform to the publicly desirable behaviour, the costs of others dissenting increases. Reputational pressures are thus self-reinforcing (Akerlof, 1976; Kuran, 1989, 1991, 1995). Informational cascades operate similarly but are based on factual opinions rather than beliefs. If many people express belief in some proposition, those who would otherwise believe the opposite are sent a strong signal that the majority has private information to which they are not privy (Banerjee, 1992; Bikhchandani, Hirshleifer, & Welch, 1992; Hirshleifer, 1995; Sunstein, 2000). In both cases, a biased pool of available public opinion becomes self-reinforcing. Kuran and Sunstein point to the panics over Love Canal, Alar, and TWA Flight 800 as cases where reputational and informational cascades combined to create biased risk judgments and excessive policy responses.

The question is whether constitutional constraints can protect individual rights from government violation in the face of such preference spikes. Higgs would answer in the negative, since people are not likely to reflect on the niceties of constitutional law in times of crisis. There is an argument to be made to the contrary, however. Sunstein (2000, p. 96) suggests that certain arguments have rhetorical advantages over others during availability cascades. It seems plausible that substantive constitutional protections could provide such a rhetorical advantage. Thus, if policy is most likely to change dramatically during preference spikes – times of ill humor – parchment might be most effective when the private sphere would otherwise be invaded. By altering the dynamics of availability cascades, parchment may be robust in the sense of coming into play just when it is most needed.

#### 4. Empirical Strategy

In order to investigate empirically whether and under what conditions substantive constitutional rules constrain policy choice and thereby have an effect on freedom, we need to find a constitutional rule which is neither too common nor uncommon and for which there exists a reliable measure of the outcome. Most constitutional rules, though, are either very common or very uncommon. Freedom of expression, assembly, and association, for example, are guaranteed in most constitutions containing a bill of rights. The right to bear arms, on the other hand, is very uncommon. Without a significant number of cases taking each value in our variable of interest, the explanatory power of the model is reduced.<sup>11</sup> Additionally, we might run into problems measuring the policy outcomes we are interested in. Governments can restrict freedom in any number of ways, and any attempt to estimate the total level of freedom in a particular domain is bound to be a major undertaking. Fortunately, indices of freedom in various domains already exist. This does, though, restrict the types of constitutional provision we can choose to investigate.

Two types of freedom which meet these two conditions fairly well are economic freedom and freedom of the press. The right to conduct a business, for example, is guaranteed by around 35 percent of the constitutions studied by the Comparative Constitutions Project, and economic freedom is measured annually by both the Fraser Institute and the Heritage Foundation.<sup>12</sup> Around 60 percent of constitutions

<sup>11</sup> Reports on various constitutional rights are available at <http://www.constitutionmaking.org/reports.html>

<sup>12</sup> See <http://www.freetheworld.com/> and <http://www.heritage.org/Index/>

guarantee press freedom, and around 35 percent prohibit censorship. Further, Reporters without Borders and Freedom House both produce indices of press freedom.<sup>13</sup> Since constitutional guarantees of property rights and the freedom to do business are restricted mostly to former socialist countries, I will investigate the effect of constitutional guarantees of press freedom and prohibition of censorship on freedom of the press as it is experienced by journalists.

As a dependent variable, I chose the 2008 Reporters without Borders index of press freedom.<sup>14</sup> This attempts to measure “the degree of freedom that journalists and news organisations enjoy in each country, and the efforts made by the authorities to respect and ensure respect for this freedom.”<sup>15</sup> The index uses a questionnaire<sup>16</sup> which takes into account the murder, imprisonment, attacks, and threats on journalists; the level of censorship, confiscation, search, and harassment to which news organisations are subjected; journalistic self-censorship; the level of state monopolisation or regulation of news media; and legal penalties for press offences. Each country is given a score on a 0-100 scale, with 0 being most free. The independent variables of primary interest are constitutional guarantees of freedom of the press and constitutional prohibition of censorship. I conducted a content analysis of the constitutions of 135 countries (all of those for which important data such as RSF index, World Bank governance indicators, and Freedom House freedom index were available, excluding cases with no recognised government). Information was taken primarily from online versions of national constitutions. Constitutional guarantee of press freedom was coded as 2 if the constitution provided for unqualified protection of press freedom, or qualified only with reference to defamation; as 1 if freedom of the press was guaranteed but qualified; and as 0 if press freedom is not guaranteed. Constitutional prohibition of censorship was coded as 2 if censorship was prohibited without qualification; as 1 if prohibition was qualified; and as 0 if not prohibited.

A number of structural constitutional variables were also included, including constitutional rigidity;<sup>17</sup> strength of judicial review;<sup>18</sup> judicial independence;<sup>19</sup> presidential system;<sup>20</sup> bicameral legislature;<sup>21</sup> majoritarian electoral rule for lower house;<sup>22</sup> federal system;<sup>23</sup> and dictatorship.<sup>24</sup> Other independent variables in the general model were GDP per capita;<sup>25</sup> Freedom House Freedom of the World Index subscores;<sup>26</sup> government respect for religious freedom and physical integrity rights;<sup>27</sup> World Bank Governance Indicators;<sup>28</sup> The Economist Intelligence Units Democracy Index electoral process subscore;<sup>29</sup> region;<sup>30</sup> absolute latitude; legal origins;<sup>31</sup> ethnic, linguistic, and religious fractionalisation;<sup>32</sup> and age of constitution.

<sup>13</sup> See <http://www.rsf.org/> and <http://www.freedomhouse.org/template.cfm?page=16>

<sup>14</sup> <http://www.rsf.org/en-classement794-2008.html>

<sup>15</sup> [http://arabia.reporters-sans-frontieres.org/article.php3?id\\_article=29013](http://arabia.reporters-sans-frontieres.org/article.php3?id_article=29013)

<sup>16</sup> [http://arabia.reporters-sans-frontieres.org/article.php3?id\\_article=29011](http://arabia.reporters-sans-frontieres.org/article.php3?id_article=29011)

<sup>17</sup> Using the methodology of La Porta et al (2004), expanded using information from Maddex (2008) as well as primary constitutional documents.

<sup>18</sup> Using the methodology of La Porta et al (2004), expanded using information from Maddex (2008) as well as primary constitutional documents.

<sup>19</sup> Cingranelli & Richards (2008).

<sup>20</sup> Johnson & Wallack (2007).

<sup>21</sup> Johnson & Wallack (2007).

<sup>22</sup> Based on information from the Institute for Democracy and Electoral Assistance. See <http://www.idea.int/esd/world.cfm>

<sup>23</sup> Based on information from Maddex (2008) and the CIA World Factbook.

<sup>24</sup> Based on information from Maddex (2008) and the CIA World Factbook.

<sup>25</sup> CIA world factbook. PPP in 2008 US\$, 2008 estimate. <https://www.cia.gov/library/publications/the-world-factbook/fields/2004.html>

<sup>26</sup> Electoral process, political pluralism and participation, associational and organisational rights, rule of law, and personal autonomy and individual rights. <http://www.freedomhouse.org/template.cfm?page=363&year=2008>

<sup>27</sup> Cingranelli & Richards (2008).

<sup>28</sup> Political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp)

<sup>29</sup> <http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>

<sup>30</sup> Based on UN classification.

<sup>31</sup> La Porta et al (2008).

To measure the effect of constitutional prohibitions of censorship and guarantees of press freedom on the level of actual press freedom at the country level, I use an ordinary least squares (OLS) regression based on a general-to-specific modelling procedure (Campos, Ericsson, & Hendry, 2005).<sup>33</sup>

After removing the least significant of sets of independent variables measuring roughly the same thing (such as the World Bank and Freedom House values for the Rule of Law), the most general model without interactions contained 36 independent variables. Added to this model were 26 interaction variables – (judicial review multiplied by judicial independence to give a measure of effective judicial review; and each of the constitutional variables multiplied by *de jure* judicial review, effective judicial review, constitutional rigidity, rule of law, government effectiveness, regulatory quality, control of corruption, degree of electoral democracy, personal autonomy, religious freedom, physical integrity rights, freedom of association, and dictatorship) – giving a total of 62 independent variables. The least significant variables were removed until only those with a t-stat of one or greater, or those included in an interaction with a t-stat of one or greater, remained. This left a model which tested 129 countries with 42 independent variables, and with an  $r^2$  of 0.9223. As a robustness check, I also ran this reduced set of variables as an ordered logistic regression, with three different divisions of the dependent variable (broken into 10 and 20 categories, and rounded to the nearest even number).

## 5. Results

Table 1 presents the results of each of these models for selected variables. The full regression table is provided as an appendix.

Comparing the results of the OLS and ordered logistic regressions, it seems that only the ten-category logistic regression closely matches results the results of the OLS. This suggests that the OLS model is capable of explaining broad changes in press freedom but not finer movements. With that in mind, the remainder of this section will interpret the most interesting results.

We cannot be certain that constitutional protections have a causal effect on state repression, since countries with a general commitment to freedom of the press may be more likely to prohibit censorship in their constitutions. It would be surprising, though, if countries with a commitment to press freedom were more likely to prohibit censorship but not provide for general freedom of the press. A causal link does seem like the best explanation for these results. If we accept a causal relationship between parchment and freedom of the press, the results suggest that constitutional provisions are more effective when they are specific and thus contain less scope for governments to circumvent the spirit of the constitution.

### 5.1. Does Parchment Matter?

The results are consistent with past empirical work which suggests that substantive constitutional constraints have some effect on freedom. Constitutional prohibition of censorship does protect actual press freedom. Countries with an unqualified prohibition of censorship score 31 points lower on the index of press freedom (i.e. the press is more free). This is just over one and one-third standard deviations. Constitutional guarantee of freedom of the press has the expected sign, but the result is not significant. Press freedom provisions do significantly increase press freedom in interaction with control of corruption (that is, the provisions matter when corruption is low), but the effect is relatively small. A one standard deviation increase in the interaction term decreases the press freedom index by slightly less than eight points, around one-third of a standard deviation.

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<sup>32</sup> Alesina et al (2003).

<sup>33</sup> To deal with heteroscedasticity, I used Stata's robust regression procedure. Multicollinearity is bound to be a problem whenever we are dealing with measures of good governance, which are highly correlated. As the results of the VIF test show, this study is no exception. Multicollinearity, though, inflates variance without inducing bias and thus merely attenuates significance levels. The variables of the model were selected through a general-to-specific reduction, in which variables are dropped sequentially until only those with a t-statistic greater than 1 remain; dropping further variables risks trading precision against specification bias. Following Kennedy's (2003) advice, I will accept the inflation in variance rather than risk inducing bias.

**Table 1: Selected Regression Results**

	<b>rsfindex</b>	<b>rsf_10</b>	<b>rsf_20</b>	<b>rsf_round2</b>
Constitution prohibits censorship	-15.5285 (0.001)***	-5.387236 (0.007)***	-1.780159 (0.185)	-1.359787 (0.325)
Constitution guarantees press freedom	-6.83121 (0.356)	1.846098 (0.586)	0.8447779 (0.735)	-1.826864 (0.453)
(Constitution prohibits censorship)* (Effective judicial review)	-2.62703 (0.008)***	-1.088758 (0.008)***	-0.7129651 (0.005)***	-0.5319672 (0.045)
(Constitution guarantees press freedom)* (Effective judicial review)	-1.59005 (0.140)	-0.8329569 (0.186)	-0.2834118 (0.403)	-0.2081564 (0.572)
(Constitution prohibits censorship)* (Effective government [World Bank])	-5.28417 (0.009)***	-1.231046 (0.240)	-1.556122 (0.034)**	-1.406685 (0.051)*
(Constitution prohibits censorship)* (Regulatory quality [World Bank])	9.57178 (0.000)***	2.5141 (0.002)***	1.946914 (0.015)**	1.877308 (0.042)**
(Constitution guarantees press freedom)* (Control of corruption [World Bank])	-4.04274 (0.003)***	-2.485171 (0.000)***	-1.702165 (0.000)***	-0.9700899 (0.037)**
(Constitution guarantees press freedom)* (Freedom of association [Freedom House])	2.19318 (0.000)***	0.8324951 (0.000)***	0.6029516 (0.000)***	0.5264636 (0.001)***

n=129  
p values in parentheses  
All variables and interaction terms are described in appendices 1 and 2.  
rsfindex = additive robust OLS regression; R2=0.9223; P>F=0.000; Mean VIF=23.68  
rsf\_10 = 10 category robust ordered logit; Pseudo R2=0.6256; P>Chi2=0.000;  
rsf\_20 = 20 category robust ordered logit; Pseudo R2=0.5165; P>Chi2=0.000;  
rsf\_round2 = rounded robust ordered logit ; Pseudo R2=0.4057; P>Chi2=0.000;  
\* significant at 10%; \*\* significant at 5%; \*\*\* significant at 1%

This suggests that thinkers such as de Jasay are overly pessimistic about the effectiveness of substantive constitutional rules. On the other hand, the extent to which constitutional provisions guaranteeing press freedom and prohibiting censorship is far from absolute.

The fact that constitutional prohibitions of censorship, but not guarantees of press freedom, are effective raises some interesting possibilities. This might suggest that rights need to be clearly and unambiguously specified. A clause stating that “there shall be no censorship” leaves less room for interpretation and distortion than “freedom of the press is guaranteed.” This, of course, would require further study using a variety of constitutional variables.

## 5.2. Are Constitutions Robust?

Consistent with Buchanan’s view of constitutions as insurance, and contra Higgs, prohibition of censorship seems to protect press freedom at precisely those times when it might otherwise be restricted. The interaction of prohibition of censorship and the World Bank’s measure of regulatory quality has a strongly harmful effect on press freedom. Regulatory quality, as measured by the World Bank, seems to be a fairly good proxy for economic liberalism. It includes the absence of trade restrictions and other barriers to business formation and operation. This result means that the constitutional prohibition of censorship becomes more effective as regulatory quality decreases. For those countries with regulatory

quality less than zero,<sup>34</sup> moving from no prohibition to unqualified decreases the press freedom index score by almost 70 points – or 2.97 standard deviations. This result is significant at the ten percent level of confidence, but, due to greater variance in press freedom for countries with lower regulatory quality, we should not take the magnitude of the relationship too literally. In countries with regulatory quality greater than one, in contrast, prohibition of censorship has the wrong sign but is not significant. The interaction between constitutional guarantees of press freedom and Freedom House’s measure of freedom of association is also positive. This means that what little (and statistically insignificant overall) effect press freedom provisions have on press freedom outcomes is concentrated in countries with low freedom of association. This suggests that constitutional provisions are effective mainly in otherwise illiberal countries and have no effect (or may even be harmful) in liberal countries, though these results are not significant due to a small sample size and large error terms.

### 5.3. Parchment Backed by Structure

Prohibition of censorship seems to be effective in protecting press freedom when *effective* judicial review (that is, *de jure* judicial review multiplied by independence of the judiciary) is high. Interestingly, prohibition of censorship combined with *de jure* judicial review seems to hurt press freedom. This is surprising but could be due to *de jure* judicial review lending legitimacy to government actions without providing an effective check on those actions. Thus, we may have some evidence for the idea that a parchment is effective when backed by well-functioning structural machinery.

Some unexpected results, however, should make any conclusions drawn from the judicial review variables very tentative indeed. *De jure* judicial review seems to improve press freedom independently of the constitutional variables, while *effective* judicial review seems to deteriorate it. This is a counterintuitive result and I have no plausible explanation.

### 5.4. Other Results

As we might expect, government respect for the physical integrity of citizens and their freedom of association is positively correlated with press freedom: countries liberal in one sphere will also be liberal in others. Freedom House’s measure of personal autonomy and individual rights, however, is significantly *negatively* correlated with press freedom. This measure, though, includes private actions by individuals and firms such as discrimination and the provision of unsafe working conditions. A possible interpretation of this result is that government intervention to prevent private discrimination and unsafe working conditions increases the score of those countries which are also likely to restrict press freedom. Interestingly, the World Bank measures of government effectiveness and control of corruption seem to decrease press freedom. A possible interpretation is that once we control for various measures of liberalism and good governance outcomes, the efficiency of government allows it to more effectively restrict freedom (Crampton and Farrant 2006, 2008).

The results also shed light on what types of structural factors act to protect freedom. Majoritarian electoral systems such as first-past-the-post are correlated with less press freedom. This is intuitive from a public choice perspective: more proportional systems increase the size of the minimum winning coalition and thereby mitigate the tyranny of the majority (Buchanan & Tullock 1962). Presidential systems are more likely to restrict press freedom than parliamentary systems. While public choice analysis would suggest that separation of the executive and legislative functions of government would decrease the potential for tyranny, many actual presidents have wide-ranging powers and are in practice unconstrained by the legislative branch. For similar reasons, we should also expect bicameralism to increase press freedom. Surprisingly, it does not show a significant effect and has the wrong sign.

## 6. Conclusion

The empirical results above suggest that parchment does matter. If specific, substantive constitutional rules do seem to achieve their aim of protecting certain spheres of activity from government intervention.

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<sup>34</sup> World Bank Governance indicators have a mean of 0 and standard deviation of 1.

De Jasay's (1989) rejection of constitutional constraints as mere parchment with no effect on government behaviour is unjustified. Similarly, Higgs seems to be incorrect that constitutions provide only fair weather protection against oppressive government. Whereas Davenport (1996) finds interactions between conflict and constitutional protection, by including more independent variables I find that constitutional protections interact strongly with various measures which tap into the liberalism of government policy. This suggests that constitutional protections are most effective when policy is otherwise illiberal: parchment matters most precisely when it is needed. While, again, more research is required to ascertain whether this is true of constitutional protections in general, this lends support to Brennan and Buchanan's view of constitutions as protecting against the worst outcomes. The insurance metaphor for constitutions is appropriate to this extent.

On the other hand, constitutional guarantees never provide absolute protection against state repression but rather reduce the level of repression which would otherwise occur. Governments frequently go against the spirit and the word of their constitutions, and there is never any truly independent and impartial enforcer of constitutional constraints. Farrant and Paganelli (Farrant, 2004; Farrant & Paganelli, 2005) are correct that Buchanan is not a consistent worse-case thinker and that the robustness of constitutional rules is contingent upon their enforcement or perceived force among rulers. This makes the standard view of constitutions as the "rules of the game" of post-constitutional politics problematic. While choice at the constitutional level does alter the conditions under which the post-constitutional game is played, it can never create an absolutely binding set of rules enforced by an external arbiter.

Compare this to the situation of two boxers about to enter the ring. Each would prefer to win and, we may suppose, does not much care about honour or gamesmanship. The game they face is clearly one of conflict, since they cannot both have what they desire. Each also has other preferences, though, which allow for mutually advantageous agreement prior to the match. Each wishes to minimise the pain and injury he suffers at the hand of his opponent. This being so, each will likely agree to prohibit certain actions and otherwise set up the match in such a fashion as to minimise pain and injury. Each would prefer to be able to punch the other below the belt, fight bare-knuckle, or wrap their gloves in barbed wire<sup>35</sup> but are eager to give up these liberties if their opponent reciprocates: the veil of uncertainty compels each of them to promote the general welfare of both at the stage of rule-choice.

The boxers are also capable of appointing a neutral referee to adjudicate the match. They can grant this referee complete power (albeit entirely deriving from convention and perceived legitimacy) to enforce the rules and punish violations with penalties or disqualification. They can also limit the power of the referee, since a referee who does not enforce the rules neutrally or decides to shoot both participants and declare himself the winner will lose legitimacy and no longer be considered the referee. This is where the analogy with constitutional choice becomes problematic. People can make agreements at the constitutional level but can never appoint a neutral referee without any interest in the outcome of the match. Judicial review may allow for some external enforcement, but judges will never be neutral and should be seen as another player in the game of politics. Government is never external to society but merely channels the conflict inherent in human relations in different ways. Interests will always sneak in, and representation of those interests is unavoidable. The situation is like that of the two boxers who must agree on rules without a referee: they can make all the agreements they want but can later renege when it is to their advantage. Unenforced agreement may have some force, but when the payoff from violation is sufficiently large, the agreement will break down.

How, then, are they to make credible agreements? Instead of agreeing on formal rules of conduct such as "no hitting below the belt" (substantive clauses of a constitution), they will take action which actually reduces the capacity to do damage later. The latter strategy, if conducted competently, will be self-enforcing. Each contestant would prefer the other wear gloves sufficiently thick to soften the blows somewhat. Of course, each would have an incentive to remove the gloves during the fight. Realising this, the players may agree to have a representative of the other fasten their gloves in such a way as to make them impossible to remove during the match. This reduces the potential damage of the contest but does not ensure entirely good behaviour. There will still be hitting below the belt (analogous to the violation of

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<sup>35</sup> They don't allow that no more.

some protected individual liberty), but the resulting damage will be lessened. This is analogous to structural constitutional constraint like the separation of powers.

While more investigation is required to ascertain the mechanism through which substantive constitutional rules affect government behaviour, the relationship is likely mediated by the preferences of political actors and the perceived costs of the prohibited action. A constitutional prohibition of censorship does not make censorship impossible, as governments have repeatedly demonstrated, but may make voters less supportive of censorship or increase the perceived political costs of censorship for government decision makers by lowering the cost of punishing bad behaviour, as suggested in subsection 3.3 above.

Unfortunately, much of the normative force of constitutionalism depends on absolutely binding substantive restrictions on government power. Liberalism in general and the classical liberalism of Buchanan in particular are committed to avoiding what William Galston (2005) calls civic totalism: the tendency of collective choice to encroach on every aspect of life, removing the private sphere altogether. Avoiding civic totalism requires not only that government be restrained in its policymaking but that *some choices must be left entirely to individuals*. We currently have no way to successfully “define the relative spheres for private and governmental action” (Buchanan, 2001, p. 45). Since neither parchment nor structure is capable of building an impermeable wall between the public and private spheres, constitutionalism will fail to deliver on this promise.

This reveals the inadequacy of the “insurance” and “rules of the game” metaphors for constitutional constraint. Insurance comes with an upfront cost and makes us indifferent to subsequent misfortune, while rules create binding constraints meant to make certain actions illegitimate and punishable. Constitutional constraints, on the other hand, seem to reduce the cost of bad states of the world at any point along the spectrum past some threshold. A more apt analogy than would be a cyclist choosing to wear a helmet. Any accident (desire among political actors for the restriction of liberty) will lead to injury (state repression), but the helmet reduces the level of injury resulting from crashes of any given severity.

While structural rules are more self-enforcing, they are also relatively blunt instruments when compared to bills of rights. Supermajority requirements or bicameral legislatures may give extra weight to the preferences of minorities relative to unconstrained majoritarianism, but they are not capable of protecting particular spheres of private life against interference from the majority. Constitutions never rule out particular political outcomes but simply alter the operation of the political system in ways we hope are beneficial on net. Treating constitutions like binding rules or insurance policies obscures this fact.

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## Appendix One: Full Regression Results

Dataset at: <http://bradtaylor.me/sites/default/files/bradtaylor.me/Taylor2009dataset.csv>; Description of variables at: <http://bradtaylor.me/sites/default/files/bradtaylor.me/Taylor2009Variables.pdf>

Description	Variable	rsfindex	rsf_10	rsf_20	rsf_round2
Constitution prohibits censorship	cancel	-15.5285 (0.001)***	-5.387236 (0.007)***	-1.780159 (0.185)	-1.359787 (0.325)
Constitution guarantees press freedom	press	-6.83121 (0.356)	1.846098 (0.586)	0.8447779 (0.735)	-1.826864 (0.453)
Constitutional rigidity	rigid	-3.30466 (0.182)	-0.7575211 (0.481)	-0.4182322 (0.613)	-0.8389507 (0.264)
Judicial review	jud_rev	-7.37067 (0.019)**	-2.402487 (0.006)***	-1.690257 (0.058)*	-1.169442 (0.209)
Judicial independence	injud	-0.50702 (0.882)	-0.4550784 (0.730)	-0.2865044 (0.775)	-0.2970971 (0.756)
Plurality electoral system	plurality	4.871623 (0.047)**	1.959723 (0.009)***	0.8239569 (0.179)	0.8995984 (0.145)
Dictatorship	dictator	-10.4186 (0.168)	-3.603375 (0.145)	-2.149076 (0.248)	-1.704775 (0.398)
Bicameral legislature	bicameral	1.944788 (0.273)	1.573275 (0.007)***	1.180668 (0.040)**	0.9624201 (0.054)*

Parliamentary system	system	-3.10687 (0.007)***	-1.245983 (0.014)**	-1.038949 (0.003)***	-1.146248 (0.000)***
GDP per capita	gdp	-0.00029 (0.002)***	-0.0001093 (0.000)***	-0.0000946 (0.000)***	-0.0000937 (0.000)***
Age of constitution	age_const	0.040046 (0.036)**	0.0120377 (0.462)	0.0127337 (0.079)*	0.0099458 (0.089)*
Physical integrity rights	physint	-4.05703 (0.000)***	-1.338471 (0.000)***	-0.9409542 (0.001)***	-0.7826334 (0.009)***
Religious freedom	relfre	2.437531 (0.417)	1.103513 (0.302)	0.1049773 (0.923)	-0.0626403 (0.950)
Functioning electoral process	electoral	-0.88718 (0.313)	-0.1702824 (0.535)	-0.1411834 (0.578)	-0.1031308 (0.687)
Political pluralism and participation	fh_plural	-0.85318 (0.238)	-0.3932254 (0.020)**	-0.244432 (0.271)	-0.2493416 (0.253)
Freedom of association	fh_association	-4.41792 (0.000)***	-1.505901 (0.000)***	-1.330055 (0.000)***	-1.120331 (0.000)***
Personal autonomy and individual rights	fh_autonomy	1.54415 (0.053)*	0.266203 (0.238)	0.2689515 (0.135)	0.2192176 (0.246)
Government effectiveness	wb_effective	9.650104 (0.028)**	1.895988 (0.165)	1.805289 (0.135)	2.28316 (0.095)
Regulatory quality	wb_regulatory	-14.7851 (0.000)***	-2.930087 (0.022)**	-3.193759 (0.010)**	-3.528185 (0.010)
Rule of law	wb_ruleoflaw	-8.0557 (0.059)*	-2.619414 (0.066)*	-2.13174 (0.135)	-2.010989 (0.174)
Control of corruption	wb_corruption	14.42035 (0.001)***	5.590959 (0.001)***	4.353779 (0.002)***	3.438491 (0.018)**
German legal origins	legalorigins_ge	3.517589 (0.138)	1.388722 (0.217)	1.332003 (0.089)*	0.8025939 (0.183)
Ethnic fractionalization	ethnic_frac	-5.10693 (0.229)	-0.3444986 (0.838)	-1.572943 (0.256)	-2.295941 (0.079)*

Religious fractionalization	religion_frac	-7.08831	-3.50846	-2.681207	-1.803548
		(0.117)	(0.020)**	(0.026)**	(0.120)
Absolute latitude	latitude_abs	-0.23689	-0.0899194	-0.1220052	-0.1092962
		(0.025)**	(0.001)***	(0.000)***	(0.000)***
In Africa	africa	-6.24832	-1.476395	-1.912415	-2.048965
		(0.058)*	(0.120)	(0.012)**	(0.012)**
In Latin America	latin_am	-6.6806	-2.076129	-3.071924	-3.344214
		(0.084)*	(0.119)	(0.052)*	(0.033)**
In Europe	europa	3.816556	-0.4263636	0.2294086	0.2067121
		(0.086)*	(0.550)	(0.738)	(0.770)
In Oceania	oceania	-5.20815	-35.31598	-2.837101	-1.573704
		(0.291)	(0.000)***	(0.048)**	(0.298)
Interaction: constitutional prohibits censorship * judicial review	censo_judrev	5.664842	1.765729	1.310671	0.8572062
		(0.004)***	(0.021)**	(0.024)**	(0.149)
Interaction: constitution guarantees press freedom * constitutional rigidity	press_rigid	2.801103	0.5963958	0.4902594	0.766442
		(0.198)	(0.507)	(0.492)	(0.284)
Interaction: constitutional prohibits Censorship * effective judicial review	censo_judicial	-2.62703	-1.088758	-0.7129651	-0.5319672
		(0.008)***	(0.008)***	(0.005)***	(0.045)
Interaction: constitution guarantees press freedom * effective jud. Review	press_judicial	-1.59005	-0.8329569	-0.2834118	-0.2081564
		(0.140)	(0.186)	(0.403)	(0.572)
Effective judicial review (judicial review * judicial independence)	judicial	6.692649	2.774427	1.592397	1.122874
		(0.004)***	(0.048)**	(0.021)**	(0.121)
Interaction: constitution guarantees press freedom * dictatorship	press_dictator	14.14109	2.985262	2.107464	2.482373
		(0.023)**	(0.213)	(0.246)	(0.195)
Interaction: constitution prohibits censorship * government effectiveness	censo_effective	-5.28417	-1.231046	-1.556122	-1.406685
		(0.009)***	(0.240)	(0.034)**	(0.051)*

Interaction: constitution prohibits censorship * regulatory quality	censor_regulatory	9.57178	2.5141	1.946914	1.877308
		(0.000)***	(0.002)***	(0.015)**	(0.042)**
Interaction: constitution guarantees press freedom * control of corruption	press_corruption	-4.04274	-2.485171	-1.702165	-0.9700899
		(0.003)***	(0.000)***	(0.000)***	(0.037)**
Interaction: constitution prohibits censorship * electoral process	censor_electoral	-0.68447	-0.0304714	-0.0781621	-0.0181749
		(0.086)*	(0.831)	(0.593)	(0.902)
Interaction: constitution guarantees press freedom * freedom of assoc.	press_association	2.19318	0.8324951	0.6029516	0.5264636
		(0.000)***	(0.000)***	(0.000)***	(0.001)***
Interaction: constitution prohibits censorship * physical integrity rights	censor_phyint	0.61211	0.3120633	0.0780656	-0.0188668
		(0.299)	(0.201)	(0.661)	(0.912)
Interaction: constitution guarantees press freedom * religious freedom	press_relfre	-3.75167	-2.132804	-1.065486	-0.812133
		(0.152)	(0.034)**	(0.312)	(0.387)

n=129

p values in parentheses

rsfindex = additive robust OLS regression; R2=0.9223; P>F=0.000; Mean VIF=23.68

rsf\_10 = 10 category robust ordered logit; Pseudo R2=0.6256; P>Chi2=0.000;

rsf\_20 = 20 category robust ordered logit; Pseudo R2=0.5165; P>Chi2=0.000;

rsf\_round2 = rounded robust ordered logit ; Pseudo R2=0.4057; P>Chi2=0.000;

\* significant at 10%; \*\* significant at 5%; \*\*\* significant at 1%

p-values are not corrected to account for general-to-specific reduction.