



## Bargaining on law and bureaucracies: A constitutional theory of development <sup>☆</sup>

Eric Brousseau <sup>a,\*</sup>, Yves Schemeil <sup>b</sup>, Jérôme Sgard <sup>c</sup>

<sup>a</sup> *EconomiX, Université Paris Ouest and CNRS, Bâtiment T, 200 avenue de la république, F-92001 Nanterre Cedex, France*

<sup>b</sup> *University of Grenoble and IUF, PACTE – IEP, BP 48, 38040 Grenoble Cedex 9, France*

<sup>c</sup> *Sciences Po; CERi, 56 rue Jacob 75006 Paris, France*

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### ABSTRACT

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The process of development is linked to the rise of an integrated and competitive economy and polity that allow a maximal division of labor and innovation. This process relies on two intertwined dynamics. First, in the establishment of the rule of law, legal instruments are appropriated by those who call for more autonomy, resulting in a progressive equalization of rights. Second, development of a capable and impartial state is a prerequisite to implementation of rights, including their translation into services delivered to citizens. The mutual expansion of these dynamics relies on a vertical negotiation between the elite and the governed. The governed call for rights that are more firmly established and more extended. The ruling elite can grant these rights to maintain its legitimacy and hence its recognized authority. This model allows discussing the sustainability of various paths of institutional change in processes of development by identifying the potential virtuous dynamics and hindering factors. *Journal of Comparative Economics* **38** (3) (2010) 253–266. EconomiX, Université Paris Ouest and CNRS, Bâtiment T, 200 avenue de la république, F-92001 Nanterre Cedex, France; University of Grenoble and IUF, PACTE – IEP, BP 48, 38040 Grenoble Cedex 9, France; Sciences Po; CERi, 56 rue Jacob 75006 Paris, France.

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*“Political economy, considered as a branch of the science of a statesman or legislator, proposes two distinct objects: first, to provide a plentiful revenue or subsistence for the people, or more properly to enable them to provide such a revenue or subsistence for themselves; and secondly, to supply the state or commonwealth with a revenue sufficient for the public services. It proposes to enrich both the people and the sovereign.”*

Adam Smith (1776). *The Wealth of Nations*, Book IV, introduction.

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\* Corresponding author.

E-mail address: [eric@brousseau.info](mailto:eric@brousseau.info) (E. Brousseau).

## 1. Introduction

It is usually assumed that the interaction between the economics and politics is dysfunctional in developing countries. Why does it seem such a stable situation? Since the early 1990s, both mainstream and other economists have addressed the issue with renewed calls for a more thorough approach to studying the role of states and institutions in market economies. Transition in Eastern Europe and the experience of high growth and crises in emerging economies played a key role in rekindling these debates. Still, the field is marred with serious research shortcomings, the most conspicuous of which is the difficulty of accounting for state action and for the role of the legal regime in promoting a dynamic economy. The role of the state as builder and maintainer of the economic infrastructure is widely acknowledged by most economists. At the same time, the transition from a state manipulated by a rent-seeking elite to an organization providing the framework for an efficient market economy remains a puzzle. As indicated by the debates around the notions of “legal origin” and “legal transplants”, the mechanisms by which some legal principles would favor growth and the process by which they could be implemented are open questions.

This paper argues that development is conditioned by a parallel and interacting development of the *rule of law*, whose central features are the formalization and hierarchization of norms within a consistent framework, and *public bureaucracy*, which is characterized by independence and technical capability. Together they guarantee the credibility and evolutivity of the social pact as well as the implementation of an institutional framework favoring division of labor, collective action, and innovation. Pascal observed that “Justice without force is powerless; force without justice is tyrannical” (*Pensée* #103). Likewise, we argue that legal formalization is key to economics and political integration: legal norms are necessary to grant legitimacy and to control the coercive capability of the state; and a skilled and neutral bureaucracy is required to provide access to public goods and ensure the transforming of *de jure* rights granted to citizens into *de facto* rights that can be opposed against others.

In order to analyze the process of state building and legal evolution, this paper builds on the notion of *constitutionalization*. Rather than viewing rights as being established once (under conditions that are often unique) or being the corollary outcome of an external dynamic, we envisage rights—both political and economic—as the product of an ongoing bargaining process. Rights are debated, fought over, supported, and possibly renegotiated by unequal (though purposeful) agents who interact with their rulers.

In particular, we consider the vertical delegation of authority by individuals to political rulers. This delegation aims to provide the ruler(s) with the capability to establish both the fundamental rights of individuals and the basic rules of social exchange in a given society. The problem with rulers is that, once endowed with considerable power, they may trample on the individual and property rights of their subjects. We contrast two types of constitutional delegations. Under a liberal regime, the governed are able to establish strong guarantees. The recognition of extended and equal fundamental rights to all—combined with a balance of power in the organization of the relationship among authorities—binds the rulers to the governed. In order to maintain their leadership position, rulers must please the governed by efficiently providing them with the public goods they need. Yet in the absence of strong guarantees, rulers are likely to bargain with different groups in society to guarantee them specific (and thus unequal) rights. The result is a sustainable coalition in which various individuals and groups obtain rents. In this context, which in our framework is defined as a despotic constitution, the governed are unable to credibly balance the power of those benefiting from a constitutional delegation. In response, the governed tend to grant delegations to several rulers in charge of different dimensions of collective coordination—typically local communities, professional guilds, or warlords. This way of challenging the power of rulers allows the population to limit capture, but it leads to inefficiencies in collective coordination and in the provision of public goods. First of all, authorities are not likely to operate at the proper scale. Second, competition among rulers can hinder their capacity to provide order and may even result in (possibly violent) conflict.

Starting from this, we show that there is an intrinsic dynamic of constitutionalization processes by which citizens—who may have been granted unequal fundamental rights at a particular historical moment—call for an extension and equalization of their rights, which in turn leads to the emergence of liberal orders characterized by strong equality of rights. This promotes competition, facilitates innovation, and boosts participation in collective action, thereby promoting economic and civic development. The main driver of this evolution is the “call” of the governed for adjustments to the existing constitutional arrangement so that they can reap the benefits of wealth and autonomy from their increased capacities. The essential inhibitor to such development is the desire of elites to preserve their rents and their share in a despotic regime (or natural state or oligarchic society, to cite other categories featured in this literature). However, the elite need political support and revenues from tax, for which they bargain by offering to devolve more rights to (some groups of) citizens.

Section 2 returns to the literature and historical evidence on the link between institutions and development, and it also discusses our influences and this contribution. Section 3 develops our analysis of the relationship between the institutional framework and the economy, highlighting a “growth and legitimacy” loop as characteristic of liberal regimes. Section 4 focuses on the dynamics of institutional evolutions, stressing the role of legal formalization and bureaucratic capabilities, and division of labor. We conclude in Section 5 by remarking on how both the law and the state are meant to be nonnegotiable mechanisms for easing negotiation among society’s stakeholders and guaranteeing the resulting agreements.

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