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## THE POLITICAL FOUNDATIONS OF DEMOCRACY AND THE RULE OF LAW

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# The Political Foundations of Democracy And the Rule of Law

Barry R. Weingast\*

Order is not a pressure imposed upon society from without, but an equilibrium which is set up from within.<sup>†</sup>

## 1. Introduction

Why are some societies characterized by well-defined, stable individual rights and others not? Why are constitutional provisions easily evaded or ignored in some societies and respected and binding in others? In short, what accounts for democratic stability and for the emergence and maintenance of the *rule of law*, a society of stable political rules and rights applied impartially to all citizens?

These questions have long been of interests to students of democracy. In the face of the fall of Communism, they have attained significantly more attention, indeed, an urgency. One of the great problems with this literature is that most scholars treat these questions in isolation, from questions about the economy. The problem for the former Communist regimes is a simultaneous transition from socialism to democracy and

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<sup>†</sup> J. Ortega y Gasset, *Mirabeau o el politico*, quoted in Hayek (1960, 148).

markets. This dual quest forces us to consider the compatibility of a given set of political institutions with economy development. Put simply, the central question is: How can a program for economic reform be lodged within a larger political framework that can sustain it? This is a particularly difficult question, for, as economists have long-known, a thriving economic system is one that requires stable expectations about economic rights. A political system that admits large or unpredictable swings in public policy simply fails to accomplish this goal, and, more broadly, to establish the rule of law.

The purpose of this paper is to develop an approach to help address these questions. To focus our attention, we begin by investigating the limits on sovereign or state power. We assume that all citizens have preferences, opinions, and values about these limits and about what acts violate them. This allows citizens to classify state actions into those they consider *legitimate* and those that constitute a fundamental *transgression* of their rights. Notice that these concepts are defined for an individual, not for the society. No automatic mechanism is assumed to create a societal consensus about such values. Citizens may have widely different views about these limits and about fundamental transgressions. Moreover, apart from their preferences about specific limits, citizens may also have varying views about *citizen duty*, that is, what they believe citizens should do in the face of a transgression.

The model is based on two assumptions about the relationship between a sovereign and his citizens. First, we assume that a necessary condition for an individual citizen to support the sovereign is that he not transgress that citizen's rights. Second, remaining in power requires that the sovereign retain a sufficient degree of support among the citizenry. Without the necessary support, the sovereign loses power.

These assumptions have significant implications for sovereign behavior. If, on a particular issue, there exists a consensus in society about what constitutes the legitimate boundaries of the state, these assumptions imply that the sovereign will avoid actions that violate these boundaries. The reason is simple: If he ignores such boundaries, he will be deposed. On the other hand, if citizens hold different values about the legitimate boundaries of the state, the sovereign can take actions that some citizens consider fundamental transgressions as long as not all citizens consider them so. These assumptions also imply that, when citizens agree on the appropriate boundaries of the state, those boundaries are *self-enforcing*, that is, it is in the interest of the sovereign to respect them.

This paper applies the approach to a series of contexts, the first concerning the question of democratic stability. It reveals that democratic

stability requires not only the formal institutions of democracy — elections, representation, legislatures — but the appropriate set of citizen attitudes about those institutions. For political officials to respect these institutions, citizens must be willing to withdraw their support from those officials who seek to violate these institutions. These citizens must be willing to do so even if they are the intended beneficiaries of the violation. The model also provides the theoretical underpinning for two phenomena central to earlier work on the political foundations of democracy, the role of a "civic culture" (Almond and Verba 1963) and the effect of plural societies (Rabushka and Shepsle 1972).

These findings are illustrated by the Glorious Revolution in late 17th century England. The Revolution's success underscores the importance of constitutional change in combination with a supporting consensus. Prior to that time, widely varying notions of the role of state and of citizen duty implied that citizens could not coordinate their reactions against the state. With the absence of a consensus, certain transgressions of citizens' rights went unpunished. The constitutional changes during the Revolution forged a consensus about the appropriate limits on the state, establishing widely supported limits concerning many of the important issues of the era. Thereafter, citizens could react in concert and were thus able to police state behavior.

The approach also yields implications for the emergence of democratic institutions and the rule of law in the former Soviet Union and Eastern Europe. Although citizens in these societies may all agree that democratization is necessary, they face substantial impediments to developing the necessary consensus about political, civil, and economic rights and hence about the boundaries of the state. How fast should democratization and economic reform take place? What limits should the state face, especially in the context of the obvious exigencies of the reform process such as revenue shortfalls, food shortages, and the like? To the extent that citizens fail to agree on the answers to these questions, they will find it hard to police the state, especially when times are hard. These issues point to the necessity of establishing a political basis for economic reform.

The problems in former Communist states are clearly exacerbated by a plurality of ethnic and religious groups. Hence the paper also discusses the "ethnification" of politics in which plural divisions become the basis for all state decisions. The questions addressed include: Why is this phenomenon so prevalent in plural, former Communist regimes? Why is one group willing to initiate ethnification even though this not only means

ignoring the pressing problems of transition, but, inevitably, a significantly lower social surplus?

This paper proceeds as follows. Section 2 develops the model and shows the consequences of the various equilibria, thus revealing the range of characteristics a society may exhibit. Section 3 applies the model to the problem of democratic stability. Section 4 illustrates the approach by discussing 17th century England. Section 5 turns to the problem of establishing democratic institutions and a free economy in the former Communist regimes, while section 6 takes up the special problem of the ethnification of politics in those regimes. The concluding discussion develops the implications of the approach for the maintenance of democracy, the emergence of a civil society, and the rule of law.

## **2. The Model**

The model is developed in stages so that two independent impediments to policing the state can be emphasized separately. In the first stage, we study the pure coordination problem induced by sovereign transgressions. This model ignores politics and the potential for alliances between the sovereign and a subset of constituents. The second model embeds the problem of coordination within a political context. This allows the sovereign to exchange some of the benefits from a transgression for the support of a subset of citizens.

### **Model 1: Pure coordination**

We begin with a game that concerns the simultaneous operation of the polity and economy. Underlying the play is the economy which yields the social surplus. The players include a sovereign, *S*, and two groups of citizens, *A* and *B*. All players share in the surplus, but the total produced and its distribution depend upon the interaction of the players. We assume that a set of economic and political rights has been specified. The sovereign, holding political power, may choose to respect citizens' rights or he may violate them. The latter allows him to confiscate some economic rents or other forms of wealth. It also generates an economic loss, reflecting the potential destruction of assets and the poor incentive effects generated by insecure property rights. The sovereign does not necessarily hold power indefinitely. In order to remain in power, he needs the support of a subset of the citizens. This reflects the notion that a sovereign without a minimal degree of support quickly finds that there

exists a rival with support sufficient to challenge him.<sup>1</sup> Thus, citizens hold some potential power over the sovereign in that they may withdraw their support. When a sufficient number of citizens withdraw support, the sovereign is deposed. The model that follows assumes that the sovereign needs the support of at least one of the citizens groups, but not both.

The sequence of play in the model is shown in Figure 1. The Sovereign moves first and must choose whether or not to transgress the rights of his citizens. Once *S* has chosen, *A* and *B* move simultaneously.<sup>2</sup> Each may choose to acquiesce or to challenge the sovereign. Challenging is costly; moreover, each may challenge even if the sovereign has not transgressed. If both *A* and *B* challenge, the sovereign is deposed and any attempted transgression by the sovereign is rebuffed. If only one group of citizens challenges *S*, the challenge fails and the transgression succeeds. Of course, if both *A* and *B* acquiesce, the transgression succeeds.

The payoffs from this game are given in Table 1. Power is valuable to the sovereign, and he gains 2 from retaining it. Total payoffs are maximized when no transgressions are attempted and neither group challenges: the sovereign receives 2, and each group, 8. Successful transgressions are also valuable to him and increase his payoff by 6, a gain of 3 from each citizen group. Though a transgression benefits the sovereign by 3 from each group, it costs each 6, reflecting the economic costs and dislocations associated with transgressions. Challenging costs each challenger 1 regardless of whether it is successful.

Outcomes are determined by the strategy combinations chosen by the three players. If *S* attempts a transgression and both *A* and *B* acquiesce, the transgression succeeds and the payoffs are: 8 to *S* (two for retaining power and three confiscated from each group), 2 to both *A* and *B* (eight minus the loss of six from a transgression). If *S* attempts to transgress against *A* and *B* and both challenge, the transgression fails and the sovereign loses power, resulting in payoffs of 0 to the sovereign (he loses power and hence his payoff of two) and 7 to each group (eight minus the costs of challenging).

The structure of the game induces a problem of coordination among the citizens. If all act in concert, they are able to police the sovereign and prevent transgressions. On the other hand, if they fail to act in concert, the sovereign can transgress the rights of citizens and survive. As in all

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<sup>1</sup> There is no assumption that the sovereign requires the support of a majority.

<sup>2</sup> The simultaneous move between *A* and *B* is shown in the figure as *A* moving first followed by *B*, but, as indicated by the dashed ellipse or "information set" around *B*'s two nodes, *B* does not know *A*'s decision when he must choose.

coordination games, how one citizen group reacts to a transgression depends upon how it anticipates the other citizen group will react. If it is assured the other will challenge, then it is best off challenging as well. But if it believes that the other group will acquiesce, then it is better off acquiescing as well.

This behavior reflects the two pure strategy equilibria of the game. In one, the sovereign transgresses the rights of citizens and both acquiesce in spite of the sovereign's behavior. This is an equilibrium because of the coordination problem. From the perspective of one citizen group, given that the other is acquiescing, it is best off by acquiescing as well: Challenging is costly and will do no good. Moreover, the sovereign has no incentive to change his behavior since he benefits from successful transgressions. Limits on the sovereign are not respected in this equilibrium.

In the other equilibrium the sovereign honors rights in society and neither group challenges, thus maximizing social surplus. In this equilibrium, both groups challenge whenever the sovereign attempts a transgression. Given the behavior of the others, neither citizen group has an incentive to alter its behavior. Nor does the sovereign. Limits on the sovereign are self-enforcing in this equilibrium.

This game reveals a natural impediment to policing the behavior of the state. Even when all members of the society agree on the definition of citizen rights, those rights might not be respected. Because the sovereign benefits from transgressions against his citizens, the sovereign is potentially tempted to violate citizen rights. Preventing transgressions, in turn, requires that citizens react in concert against the sovereign. The model reveals that limits on the state are self-enforcing when the citizens coordinate their reactions to defend those limits. As in all coordination games, even though all players are better off when all challenge following a transgression, they will not automatically do so.

### **Model 2: Coordination in a political context**

Model 1 is particularly simple. If coordination were the sole problem facing citizens, citizens would be likely to surmount it much as they easily overcome the coordination problem of which side of the road to drive on. Distributional issues complicate the problem considerably. Model 1 affords no differentiation between the two groups. A transgression against one is a transgression against the other. This implies that there is no diversity of opinion about the nature of the appropriate boundaries of the state and hence about what actions constitute a transgression.

Model 2 expands the first game to allow for two additional effects. First, the sovereign need not transgress the rights of all citizens simultaneously. Second, transgressions have distributional implications in that some of the benefits of a transgression are shared with a subset of citizens in exchange for their support. This has a natural interpretation since transgressions against one group in society often directly benefit another. For example, violating one group's right of representation to the legislature allows the other to dominate and hence to capture a greater share of the benefits. The purpose of this second model is to add a political element to the problem, one in which typical distributive concerns arise.

As before, the sovereign faces two groups of citizens, A and B; he must retain the support of at least one group in order to retain power. The sequence of actions in this game is shown in Figure 2. S moves first and may choose to attempt to transgress against both A and B, against A alone, against B alone, or against neither. After S moves, A and B move simultaneously. Each may choose to acquiesce or to challenge the sovereign. Challenging is costly. If both A and B challenge, the sovereign is deposed, and any transgression attempted by the sovereign is rebuffed. If only one group of citizens challenges S, the challenge fails and any attempted transgression succeeds. If both A and B acquiesce, any attempted transgression succeeds.

The payoffs from this game are given in Table 2. Social surplus is maximized when no transgressions or challenges are attempted, yielding 2, 8, and 8, respectively. Power is valuable to the sovereign, and he loses 2 if he is deposed. Successful transgressions are also valuable and net a total of 3 each. When S successfully transgresses against one group, he keeps 2 of the 3 and shares 1 with the other group. If S transgresses against both, he keeps 6, the entire amount extracted. A transgression against either group costs that group 6. As before, fifty percent of all confiscated surplus is destroyed. Challenging costs each challenger 1 regardless of whether it is successful.

Outcomes are determined by the strategy combinations chosen by the three players. If S attempts to transgress against both A and B and both acquiesce, the transgression succeeds and the payoffs are: 8 to S, 2 to A, and 2 to B. If S attempts to transgress against both A and B and both challenge, the transgression fails and the sovereign loses power, resulting in payoffs of 0, 7, 7.

This game adds to the coordination problem an aspect of the prisoners' dilemma. Although it is more complicated than the standard prisoners' dilemma, the structure of this game resembles the latter in that responding

to transgressions is costly for each citizen group. Consider the set of incentives facing the citizens if S attempts to transgress against B. B naturally prefers that both challenge. Notice, however, that no matter what strategy B plays, A prefers to acquiesce, that is, A has a dominant strategy and will always acquiesce in the face of a transgression against B. Knowing this, B will also acquiesce.

This structure of interaction allows the sovereign to transgress some citizens' rights and survive.<sup>3</sup> In the one-shot game, there are three pure strategy equilibria, and the Pareto optimal strategy combination with no transgressions is not among them. Which equilibria occurs depends in part upon the reaction functions of the citizens groups to a transgression. The worst outcome for the citizens — where the sovereign transgresses against both — is an equilibrium. This occurs if citizens acquiesce whenever they are the target of a transgression. Because neither A nor B has an incentive to deviate, this is an equilibrium. Acting alone and taking the behavior of the others as given, one citizen group cannot change the outcome by challenging but it will increase its costs.

The two other equilibria are "asymmetric" and occur when S targets only one citizen group. These equilibria are supported when A and B challenge S if and only if *both* are the targets of a transgression. Suppose S targets B in every period and A and B respond as just suggested. Then S has no incentive to deviate: Transgressing against both leads to being deposed; transgressing against A instead of B is no better; and transgressing against neither leaves him worse off. Furthermore, neither citizen group has an incentive to deviate. For A this conclusion is obvious. For B, it follows because B can do no better. Given that it alone is the target and that A will not challenge, B's challenging will not change the outcome but will increase its costs. Hence B is better off acquiescing if it alone is the target.

These equilibria can be interpreted in terms of their implied notion of citizen duty, i.e., the implicit specifications embedded in a strategy about how a citizen should respond to a transgression. For example, the asymmetric equilibria where S successfully transgresses against B is supported by notions that citizens should respond to the most egregious violations by S, i.e., when he targets both groups. The other equilibrium

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<sup>3</sup> Throughout we use the concept of subgame perfection as an equilibrium concept, defined as follows. A *strategy* is a specification of the action a player will take at every branch of the game tree. An *equilibrium* is a set of strategy combinations such that no player has an incentive to deviate given the strategies of others. The equilibrium is *subgame perfect* if it remains an equilibrium when restricted to every subgame.

— in which the sovereign successfully transgresses against both — corresponds to the idea of passive obedience to the sovereign, perhaps because the sovereign serves by "divine right." Notice that two other concepts of citizen duty cannot be supported in equilibrium, namely, that a citizen responds whenever he is the target or that a citizen responds whenever *any* citizen is the target. Both fail due to the dominant strategy feature of the game: when S attempts to transgress against only one citizen group, the other is always better off acquiescing. Taking this into account, the targeted citizen group is better off acquiescing. Thus, the outcome of the one-shot game is particularly grim since the rights of all citizens cannot be supported.

The situation is more complicated when this game is repeated, that is, when the interaction between the sovereign and citizens is on-going. Given the structure of payoffs, the "folk-theorem" applies, implying that virtually any outcome can be sustained as an equilibrium of the repeated game (Fudenberg and Maskin 1986). In particular, any of the equilibria of the one-shot game is an equilibrium of the repeated game. The existence of multiple equilibria is a problem for prediction, an issue we return to below.

The folk-theorem implies that the Pareto optimal outcome can be sustained. The key to this result, as with the single-shot game, concerns the behavior of each citizen group when the sovereign attempts to transgress against the other. The difference is that repetition not only provides the opportunity for citizens to punish the sovereign, but to punish one-another. The Pareto optimal outcome is supported by both groups challenging the sovereign when the sovereign attempts to transgress against either. The reason why that behavior can be supported under repeat play is that, as in the repeated prisoners' dilemma, the players can use "trigger" strategies to punish one another for failure to cooperate. For example, if A fails to challenge the sovereign when the latter attempts to transgress against B, then B can retaliate by failing in the future to challenge the sovereign whenever the sovereign attempts to transgress against A. Once this behavior by B is triggered, the sovereign can transgress successfully against A.

In the context of an attempt by S to transgress against B, B's use of the trigger strategy confronts A with the following strategy choice. It can acquiesce today, avoiding the cost of 1, and then face losing 3 in all future periods; or it can challenge today, costing 1 today but maintaining 3 in all future periods. Clearly, when A does not discount the future too heavily, it will prefer the latter so that B's trigger strategy induces A to challenge the sovereign when the latter attempts to transgress against B alone.

The notion of citizen duty embedded in this equilibrium is complex. It holds that citizens should react to any transgression, regardless of the target. It further holds that those citizens who fail to fulfill that duty should themselves be punished. An important property of this equilibrium is that it supports a *consensus*: all citizens hold the same views about citizen duty. It thus reflects a Lockean principle of active resistance to the sovereign in the face of transgressions.

Unfortunately, the Pareto optimal outcome is not the only equilibrium. Although it is normatively attractive, this equilibrium will not inevitably occur. The game might instead yield any of the three equilibria of the one-shot game, allowing successful transgressions against some or all citizens. In these equilibria, the sovereign may transgress the rights of some citizens while retaining the support of others. These are stable patterns of behavior, and none of the players, acting alone, can alter them.

The notion of citizen duty embedded in the asymmetric equilibria differs from that in the Pareto optimal equilibrium. It holds that an individual citizen should punish the Sovereign for the most egregious actions — transgressions targeted against all citizens — but not for transgressions aimed only at a subset of other citizens. The asymmetric equilibria cannot support the notion of citizen duty in which they punish one another for failing to police transgressions.

### Implications

The presence of multiple equilibrium inevitably raises the question of "equilibrium selection," i.e., which equilibrium will occur. Often game theory affords little insight into this question. In some cases, however, the characteristics of a society can be used to suggest which equilibrium will result (Ferejohn 1990).

The sovereign-transgression game presents members of a society with a massive coordination problem. In this context, Ferejohn's argument implies that it is unlikely that a society will resolve this coordination problem in a wholly decentralized manner. To see this, consider a society in which there is a diversity of preferences over outcomes. This will result from a variety of factors. First, citizens' economic circumstances differ considerably — some are wealthy elites; others, successful commercial agents or economic entrepreneurs; others, farmers who own their land; still others, peasants who work land they do not own. Second, there are individuals who are likely to be members of different groups that provide their members with a range of "cultural beliefs" (Greif 1992). These include religious or ethnic groups, labor unions, guilds, and other economic,

political, and social organizations. Members of these groups come to share a set of experiences and beliefs that differ from members in other groups.

Under these circumstances, citizen views about the appropriate role of the state and about what actions constitute a transgression are likely to differ widely.<sup>4</sup> Because there is no automatic mechanism to produce a consensus on these issues, the most natural equilibrium of the game is the asymmetric one. The diversity of preferences, opinions, cultural beliefs, and values provides an impediment to the development of the Pareto optimal equilibrium. This diversity thus makes it more likely that the game will result in one of the asymmetric equilibria in which the sovereign transgresses the rights of some while retaining the support of others.

While this implies that most societies will fail to develop the necessary means to coordinate, societies will nonetheless differ on the degree of diversity. In some societies, there may be total disagreement while in others, relatively limited. The approach implies that, transgressions can be prevented over the range of agreement.

The model shows that it is costly for the citizens to police the sovereign. When their views about the nature of the state and of citizen duty diverge, it is possible for the sovereign to form a coalition with one group of citizens against another, allowing the sovereign to transgress boundaries considered fundamental by other citizens. This problem is exacerbated by the political aspects of the problem, namely, that some citizens may benefit from transgressions against others. In the asymmetric equilibria of the model, the sovereign in effect forms a coalition with a group of constituents, transgressing the rights of others for mutual gain.

The approach thus suggests that policing a state or sovereign requires that citizens coordinate their reactions. It is therefore possible for a constitution to serve as a coordinating device. In the face of multiple coordination equilibria, a constitution can serve to coordinate citizens' strategy choices so that they attain a specific equilibrium, e.g., the Pareto optimal outcome.<sup>5</sup>

This model provides one approach to the fundamental problem of maintaining limited government, i.e., a government that observes an agreed upon set of citizen rights and boundaries on its behavior. It shows that

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<sup>4</sup> As North (1993) argues, different circumstances for individuals imply that their "local" experiences will differ and hence they will develop different "mental models," i.e., beliefs about how the world functions and hence about what characteristics ought to characterize the state.

<sup>5</sup> This point is made generally by Hardin (1989) and Ordeshook (1992) and, in the current context, by Weingast (1993).

limited government is not a natural equilibrium and is unlikely to emerge solely by the decentralized action of individuals. The inherent diversity in society prevents the required degree of consensus from emerging. And without a degree of consensus, citizens cannot police limits.

For limited government to survive in practice, citizens need a coordinating device such as a constitution. The model reveals that only limits of a specific kind of constitution can prove binding in practice, namely, those that are *self-enforcing* (Ordeshook 1992, Przeworski 1991, Weingast 1993). Limits are self-enforcing when they are in the interest of the state or sovereign to abide by them. In terms of the model, this occurs when the constitutional provisions are held in sufficiently high esteem that citizens are willing to defend them by withdrawing support from the state when it attempts to violate them. Thus a constitution must have more than philosophical or logical appeal. It must be viewed by citizens as worth defending.

As a final observation, notice that the construction of a consensus does not imply that all citizens need to arrive at the same values or to agree on the most preferred definition of state boundaries. It instead means that citizens must agree on a set of strategies. In particular, they need to agree on the set of state actions that should trigger a reaction by the citizenry. Because they have different preferences about what limits are most appropriate, agreement on a unique best set is virtually impossible. Most citizens must therefore accept something less than their first best. What they gain by such compromises, however, is the ability to police the state. When citizens act in this way, they can all be better off. Social consensus thus has a special meaning in this approach.

### 3. Democratic Stability

We now turn to the question of why some societies maintain stable democracies. Perhaps the most famous answer to this question is provided by Almond and Verba (1963). They argued in part that citizens in stable democracies are characterized by a set of widely shared attitudes and views which they call the "civic culture." These attitudes and views focus on the role of government, legitimacy, and the duty of citizens. Citizens in stable democracies possess a relatively common set of understandings about the appropriate boundaries of government and about their duty in the face of violations of these boundaries. In contrast, Almond and Verba characterized unstable and non-democracies by an absence of a system of

shared beliefs about limited government, the sanctity of individual rights, and the duties of citizens to protect and preserve them.

Rabushka and Shepsle (1972) provide a similar answer. They focus on "plural societies," i.e., those characterized by a diversity of ethnic, religious, or racial groups. Plural societies typically "lack consensus," and are states in which subnational cultural groups — as opposed to the state — serve as the primary basis of citizen loyalty. They found that "plural societies are qualitatively distinct from homogeneous ones . . . [and] that plural societies are inherently prone to violent conflict" as opposed to peaceful, democratic resolution of their differences (1972, 12). Plural societies are thus less likely to sustain stable democracies.

Our model shows that two interrelated and complementary factors account for democratic stability. First, a set of political institutions, rights of citizens, etc., that define the boundaries of government action. Second, a shared set of beliefs (Converse 1964) among the citizenry that those institutions, rights, and boundaries are both appropriate and worth defending.

As the model demonstrates, citizens cannot police political rights if their notions of those rights fundamentally differ. In those circumstances the state can undermine the fundamental pillars of a democratic society — e.g., the right of some or all citizens to vote — and still survive. Moreover, as argued above, this diversity underpins the most natural equilibrium of the game. The massive coordination problem implies that without the construction of a coordination device, citizens are unlikely to police boundaries on the state.

Our model thus provides an explanation for the findings of Almond, Verba, Rabushka, and Shepsle. The equilibria of the game correspond closely to the phenomena they studied. For Almond and Verba, the model shows why a set of common attitudes and understandings about legitimacy is crucial to the success and maintenance of democracy. They are intimately related. And yet, as the model also demonstrates, stable democracy does not simply occur because some countries happen to have the relevant shared set of beliefs while others do not. It is equally plausible, as Barry (1970, ch. III) among others observed, that societies with stable democracies foster a set of common beliefs among the citizenry. Although Barry intended his remarks to undermine Almond and Verba's perspective, our view shows that his insight and critique were correct but that his conclusion was not.

Thus the relationship between citizen views and democratic stability is not a causal one. The former cannot be treated as an independent variable with the latter as the dependent one (Lijphart 1980). Both are

instead properties of an equilibrium. Societies that have not been able to resolve their coordination dilemmas are characterized by a diversity of citizen attitudes and the lack of democratic stability. Those that have resolved such dilemmas have both democratic stability and a relative consensus among the citizenry. The key, therefore, to establishing democratic stability is fostering the solution to the coordination problem.

The importance of the behavior implied by the various equilibria of the model is illustrated by the contrast between political behavior in a stable democracy like the United States and in the unstable ones of South America. As the model suggests, one of the principal means of policing the government concerns citizen reaction to violations of agreed upon limits on government. This contrast is especially important since the formal institutions of democracy in South America often reflect a striking similarity to those in the United States, notably, a presidential system with separation of powers.

To reveal the fundamentally different patterns of political behavior, consider the following two cases. They are intended to illustrate the differences in political reaction to potential violations of established institutions and limits on government. A revealing example from the United States concerns the reaction to Roosevelt's proposal to "pack the Supreme Court" in the mid-1930s. Throughout the first four years of the Roosevelt administration, the Court maintained its historic interpretation of the Constitutional restrictions on the federal government. Relying on this interpretation, it struck down many of the central components of the New Deal. In reaction, Roosevelt devised a plan to yield a more pliant Court by expanding it. A series of new and favorable appointments would allow him to alter the working majority on the Court.

For several reasons, Roosevelt never pressed the Court packing plan. Among them — and critical for our purposes — was the public reaction to this plan. Not only did his political opponents oppose his plan, so too did many of his supporters. It was viewed by large numbers of citizens, including many of the intended beneficiaries, as an illegitimate political strategy. Because it constituted a direct assault on the constitutional principle of the separation of powers, support for this plan was dubious at best. Put simply, citizen reaction to this proposed violation was an important reason for its abandonment.<sup>6</sup>

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<sup>6</sup> In the view of one prominent legal historian, "the court-packing plan was attacked from all sides as a threat to the independence of the justices and to the whole American system. The plan was hastily abandoned and soon died" (Friedman 1984, 188).

This example illustrates one of the key results of the model: Leaders find it in their interests not to pursue extra-constitutional and contra-constitutional political strategies when their constituents withdraw support from the leader even though they are the intended beneficiaries of such strategies. The U.S. Constitution proves binding in practice despite the absence of an exogenous enforcement mechanism because of the deep respect for it among the citizenry, specifically, because citizens are willing to react to proposed violations. Knowing that reaction, political leaders rarely propose violations: Citizen reaction implies that the institutional restrictions are self-enforcing. The described nexus of political behavior is thus mutually reinforcing, i.e., it is an equilibrium.

In contrast, such behavior is significantly less likely in South America. Many of these states are characterized by cycles of democracy followed by coups and dictatorships, followed by redemocratization. Coups not only remain a potential political phenomenon, but reflect a fundamental difference between democracy in the United States and South America. Despite a structural similarity between South American institutions of democracy and those of the United States, the states of the former are not characterized by a common set of attitudes about the appropriate role of government. In particular, during hard times — for example, poor economic performance due to mismanagement or corruption — a surprisingly large portion of the citizenry are willing to support extra-constitutional means of political change.

Baloyra (1986), in his study of Venezuela, found that in 1983 over half of the respondents (53 percent) could conceive of situations where military coups are justified. Despite the increased value of its petroleum reserves during the 1970s, Venezuela experienced significant economic turmoil which some have characterized as a "‘countermiracle’ that has created misery out of abundance." Reflecting this turmoil, Baloyra found that over one-third of the respondents believed that if the political situation continued "to move along in this fashion, a military coup would be very possible within two years" (Baloyra 1986:63). Similarly, after the recent, failed coup attempt in November 1992, the *New York Times* reported that "forty-four percent of Venezuelans responding to a poll last month said they would support a coup to remove [President] Pérez from office."<sup>7</sup>

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<sup>7</sup> James Brooke, "Latin Democracy Lives In Rockets' Red Glare," *New York Times*, December 6, 1992, p. E3. The article further reports: "But an overwhelming 93% also said democracy is the best form of government for Venezuela. Playing to such sentiment, the military plotters have billed their revolts as bids to save democracy."

These findings reveal a surprisingly large degree of support for extra-constitutional means of government change during periods of poor economic and political performance. Public support for military coups reflects the following. The absence of the necessary degree of legitimacy and support among the citizenry for the constitution and constitutional means of political change implies that constitutional constraints are not self-enforcing. Because citizens are not always willing to defend their constitution, political actors need not always adhere to it. Obviously, this nexus of behavior involves a complex series of political and economic phenomena, notably, mistrust in government, endemic corruption, and the lack of belief that the government can bring about and maintain prosperity for the bulk of the citizenry.<sup>6</sup>

This nexus of phenomena — citizens unwilling to defend the constitution, endemic governmental corruption, and the support for coups — reflects the equilibrium of the model in which citizens fail to coordinate their reactions and hence fail to police the government. This pattern is mutually reinforcing because it is an equilibrium. Thus, despite the seeming similarity between the institutions of democracy in the United States and in South America, the role of the citizenry in the two cases is fundamentally different. In the former, citizens punish leaders for proposed violations to the Constitution whereas, in the latter, citizens support such violations under particular circumstances.

The model also has direct implications for Rabushka and Shepsle's findings. Most plural societies reflect the equilibrium in which there is an absence of shared beliefs about the appropriate boundaries of the state. Members of different ethnic, religious or racial groups typically have different views about the appropriate limits on the state. These divisions add an additional impediment to solving their society's coordination problem. As Rabushka and Shepsle observe, individuals in these societies tend to give their loyalty to an ethnic grouping rather than to the state. Most plural societies, therefore, reflect the equilibrium in which citizens fail to coordinate their behavior. This equilibrium is often reinforced by centuries of mistrust and violence (more on that and its implications in section 6). As a consequence, limits on the government are difficult to

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<sup>6</sup> In a prescient comment, the *Economist* summarized the recent failed coup attempt by noting that "many Venezuelans distrust their rulers so deeply that, for them, getting rid of [President] Perez would be like killing the leaves of a weed, leaving the roots to thrive and grow again." *The Economist*, "Venezuela: The President's Two Lives," December 5, 1992, p. 46.

maintain because the citizens do not agree on those limits for a large range of issues.

Although plural societies typically reflect the equilibrium of an unstable democracy, not all fall in this category. Several have developed stable democracies, and the reason underlying this is instructive. In Western Europe, for example, Belgium and Switzerland are both plural societies and stable democracies. In both cases, a set of constitutional provisions have been devised that limit the effect of plural divisions (see, e.g., Lijphart 1984). This is accomplished through a variety of institutional means, such as the decentralization of political power to more homogeneous units and the imposition of express limits on majorities at the national level.

Both Belgium and Switzerland have a written constitution: a single document containing the basic rules of governance... [that] can only be changed by special majorities. . . [In Belgium] any bill affecting the cultural autonomy of the linguistic groups requires not only the approval of two-thirds majorities in both chambers but also majorities in each linguistic group — a good example of John C. Calhoun's "concurrent majority" principle. (Lijphart 1984, 29-30.)

Both institutional devices decrease the likelihood that one ethnic or religious group will use political control to discriminate or subjugate the other. In contrast, Lijphart (1984, 23) emphasizes that in "plural societies, . . . majority rule spells majority dictatorship and civil strife rather than democracy."

These cases suggest the following conclusions. First, most plural societies face fundamental barriers to resolving their coordination problems and are therefore characterized by the asymmetric equilibrium of the game in which at least one group is discriminated against or subjugated. Second, where plural societies have been able to rise above these divisions, they do so by placing significant and credible constraints on the government that protect the various groups. This goes significantly beyond the express granting of equal rights to all to include institutions that allow for diversity of policy and programs rather than a single national one imposed on all. In both modern Belgium and Switzerland, power is decentralized to more homogeneous groups while, at the same time, national majorities are prohibited from imposing uniform policies. These institutions become credible when citizens are willing to defend them, that is, when members of all plural divisions are willing to punish potential violators of their

society's restrictions. Third, there are limits to the potential success of these institutions. In many cases, it is difficult to create relatively homogenous subunits. In others, a dominant group may not wish to relinquish its political control. And finally, as Rabushka and Shepsle point out, even in societies which have risen above their plural divisions, such divisions always hold the danger of flaring up into controversies where the willingness to respect political limits disappears.

### **Implications**

The model shows that democratic stability in a given society reflects the resolution of its coordination problem about the appropriate limits on society. When, despite the natural differences in interests, opinions, and beliefs about those limits, a solution to the coordination problem is constructed, citizens can maintain democratic institutions. When the natural divisions persist and no solution is constructed, democratic institutions are either unstable or not possible. In this view, consensus does not reflect a citizenry with an inherently uniform set of interests or values. It reflects a willingness among citizens, despite differences in interests and values, to compromise and accept a single set of standards so that they may solve their coordination problems.

Our approach emphasizes that for democratic regimes to survive, citizens must police attempted violations of the central pillars of their democracy. This, in turn, requires that a significant portion of the potential beneficiaries of a proposed violation oppose it despite the fact that it would benefit them. Although such behavior goes against their short-run interests, it is in their long-run interests if all citizens behave in that manner. Put another way, although today's proposed violation may benefit them, tomorrow's may not. Without this form of citizen reaction, governments can succeed in violations because they retain sufficient support to survive. It is this behavior that differentiates stable democracy in the United States from the unstable democracies in South America. Additionally, the approach underscores Rabushka and Shepsle's conclusion that plural societies are far less likely to support stable democratic institutions.

#### 4. The Glorious Revolution in England

The Glorious Revolution in England in 1689 nicely illustrates both aspects of the theory, the effects of the lack of social consensus and the importance of a constructing a coordinating device.<sup>9</sup> Prior to the Revolution, there was considerable disagreement about the appropriate boundaries of the state. After the Revolution, a consensus emerged about many of the central issues under dispute.

The 17th century was one of considerable controversy and turmoil. It included a Civil War, the destruction and subsequent restoration of the monarchy, and the Glorious Revolution which removed one king and brought in another. Hotly contested disputes arose about the role of the state, the rights of citizens, and citizen duty. The disputes occurred not only between the king and citizens but among different groups of citizens. By the end of the century two coalitions had formed, called Tories and Whigs. Whigs were more focused on commercial activities. They thus favored secure property rights, low and stable taxes on economic activity, and an activist profile in international relations to promote and defend their economic claims around the world. They also sought explicit limits on sovereign behavior. Tories, on the other hand, cared much less about commercial activity, wanted a low international presence, and preferred low and stable taxes on land, their primary source of wealth. They also strongly supported the Church of England and opposed explicit limits on the crown.

The two factions also differed in their views about citizen duty in the face of undesirable acts by the sovereign. Whigs held a Lockean view of active resistance in the face of such acts. Arguing that sovereign power was granted by citizens, they believed it could be withheld. Tories, in contrast, maintained a notion of passive obedience to the sovereign and believed in a duty to acquiesce even in the face of undesirable acts. As Miller (1992, 64) suggests,

Tories argued (conventionally enough) that, as the powers of kings came from God, resistance to kingly authority could never be justified: if a king maltreated his subjects, they should accept that maltreatment with the same fortitude as the primitive Christians under the pagan Roman emperors.

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<sup>9</sup> As I develop this case at great length elsewhere, I provide only a minimum of detail here (see Weingast 1992, 1993).

During the reign of the late Stuarts (from the Restoration in 1660 to the Glorious Revolution) and especially by the mid-1670s, the Tories supported the crown while the Whigs opposed it. Moreover, the late Stuarts transgressed significant rights of the Whigs while retaining support of the Tories.

The most famous illustration occurred in the 1680s when the crown initiated its campaign to "pack the constituencies," a series of transgressions against the Whigs that sought to abrogate their right of representation in Parliament.<sup>10</sup> This campaign proved remarkably successful.<sup>11</sup> By the mid-1680s, the king had successfully violated Whigs' rights of representation while retaining the support of the Tories. The Whigs' appeals about their legitimate political rights went unheeded by the Tories. The latter's self-interest, in combination with their views of the role of the sovereign and of citizen duty, led them to support the sovereign.<sup>12</sup> As long as violations of rights centered on their political opponents, the Tories benefitted along with the sovereign from transgressions. Seemingly stable, this pattern might have lasted for a considerable period.

Although the motives and wisdom for what happened next have been debated for three centuries, the actions of the crown are not in dispute.<sup>13</sup> With the removal of the Whigs as a formidable political opposition, the crown became embroiled in a dispute with its own constituents. The crown reacted by attempting to use the same techniques of disenfranchisement against its erstwhile supporters.

In reaction, the Tories joined the Whigs to form a united political nation against the king, forcing him to flee and inviting in a new one,

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<sup>10</sup> A host of other instances occurred as well. Many of the central political and individual freedoms were also abused under the Stuarts, e.g., judges fired for not following the dictates of the crown, excessive bail, excessive fines, and cruel and unusual punishment. These too were settled following the Glorious Revolution (Schwoerer 1981, 284).

<sup>11</sup> Of the 104 formerly Whig strongholds recharted between 1681 and 1685, only one returned a Whig to the next parliament (Jones 1972, 47).

<sup>12</sup> As Miller (1992, 63) suggests, in siding with the crown, the Tories chose the lesser of two evils.

<sup>13</sup> The details of this dispute need not concern us. In brief, Whig historians interpreted the Stuarts as bumbling kings taking ill-advised actions and getting the reward they deserved. More recent scholarship suggests that James II's actions represented an intelligent gamble that might have succeeded. Had James succeeded, he would have dramatically transformed the English state and emerged as one of the most powerful monarchs in Europe.

William and Mary. The Glorious Revolution was far more than a simple coup, however (Jones 1992, Schwoerer 1981). Prior to the new crown taking power, the Tories and Whigs began an intense set of negotiations over a new set of institutions to govern England. Schwoerer (1981, 291) summarizes the difference in opinion as "between those men who wanted simply to change the king and those who wanted also to change kingship." In the end, the latter won.

The Revolution resulted in a major set of institutional changes, notably, Parliament became an equal partner in government along with the crown, a transformation with significant consequences for English history (see North and Weingast 1989). Most important from our standpoint, however, is the Revolution Settlement, passed by Parliament before William and Mary were formally offered the throne.

This document is clearly an attempt to construct a coordination device. The two sides negotiated, sometimes bitterly, over what became known as the Declaration of Rights, a set of two lists. The first provided an explicit set of actions specifying the previous king's transgressions. The second listed those actions which no future king could undertake without fear of reprisal. Though the participants disagreed about the details, once an agreement occurred, they were accepted nearly unanimously.

From our standpoint, these lists reflect the construction of an explicit trigger strategy, i.e., the attempt to define a consensus about what events should trigger a joint response by members of both groups. As with coordination problems of this type, individuals disagreed about what events should trigger a reaction, but, having resolved that problem, they would unanimously supported the device. Jones provides perhaps one of the clearest statements of this view:

The thirteen points in the Declaration were not just statements of the true nature of the law of the constitution, they were also intended to provide a guideline for the future conduct of government, so that any departure from legality would be instantly signaled, and remedial action could be taken (Jones 1972, 318).

The constructed consensus also altered notions of citizen duty. Importantly, Tories relinquished the doctrine of passive obedience guiding them to acquiesce in the face of sovereign transgressions. No longer

would the king appeal to divine right to rationalize his decisions and seek obedience from his subjects.<sup>14</sup>

The consensus after the Glorious Revolution was thus a direct consequence of the new institutions. It did not result from a new, uniform set of views produced via a decentralized and uncoordinated reaction to James's actions. The agreement instead occurred over the appropriate trigger strategies.

Because the new boundaries were explicit and because they were consensual, they fundamentally changed the nature of the game between the citizenry and the new sovereign. For many of the most central political issues of the era, the Bill of Rights furnished a single set of limits on sovereign behavior, negotiated by leaders of the opposing parties. This process resulted in a new "shared belief system" (Converse 1964) about what constituted a fundamental transgression by the state and what citizens should do in the face of these transgressions. These shared beliefs implied that citizens would react in concert against any future sovereign transgression, thus ensuring that their political and economic rights were more secure.

## **5. Implications for Economic Reform in Former Communist Regimes**

The former communist regimes of Eastern Europe face the daunting task of simultaneous marketization and democratization. As Offe (1991) observes, this task is far larger in scope than the successful democratizations that have taken place in Southern Europe or Latin America. Prosperity requires, in addition to marketization, the implementation of some form of limited government that protects and promotes economic reform (Weingast 1993). How is this to be accomplished?

In a recent work, Bruce Ackerman (1992) promotes the drafting of a new constitution as a central step in this process. Essential to Ackerman's proposal is the construction of a new "liberal" constitution promoting citizen rights and a limited, efficient government. To do so, he recommends a constitutional convention to write a new constitution, a

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<sup>14</sup> To quote Schwoerer (1981, 291): "The events of the revolution and the terms of the Bill of Rights destroyed the essential ingredients of the ancient regime: the theory of divine-right monarchy, the idea of direct hereditary succession, the prerogatives of the king over law, the military, taxation, and judicial procedures that were to the detriment of the individual."

referendum to ratify the constitution, and an immediate set of elections to fill the newly created representative positions. He contrasts this approach to the piecemeal, ad hoc revision of the existing communist constitution. Our model provides a systematic theoretical underpinning for these steps and is broadly consistent with Ackerman's own rationales.

The central problem of establishing and maintaining both democracy and a free economy in these states reflects a massive coordination problem. In the wake of the fall of communism, citizens are unlikely to achieve a consensus about the appropriate role of and limits on the government. Thousands of issues are at stake: the form of political institutions, the content of public policy, the nature of political and economic rights, and the pace and sequence of economic and political reform — not to mention the degree of religious and ethnic tolerance.

Moreover, the repressive nature of the former regime exacerbates the problem of consensus. Because only officially sanctioned organizations were tolerated, few well-established organizations exist that help coordinate citizens' views. As a consequence, the most natural equilibrium is one in which boundaries on the state cannot be policed. Without the construction of a consensus about the appropriate role of the state under the new circumstances, it seems unlikely that economic and political rights can be sustained over the long run.

The three-part strategy of constitutional convention, ratification, and elections of a new government holds the potential to resolve the coordination problem. As Ackerman argues:

It is crucial for the formulation of the Constitution to stand out in the public mind as a process involving special acts of serious consideration and popular approval. . . . If constitutional formulation and ratification are given the weight they deserve, the constitution can function for the wider public as the central symbol of its revolutionary achievement (Ackerman 1992, 60 and 61).

To the extent that large numbers of citizens are convinced that the new constitution provides fair representation and is not rigged against them, it may serve as a focal point. Free elections also help generate support for the new constitution among the citizenry and thus promote a degree of consensus. In combination, these three steps are designed to develop the

coordination device necessary for citizens to police their new government.<sup>15</sup>

This three-step proposal raises several questions. First, why are written constitutions so important for the post-Communist regimes? After all, Great Britain has never had a written constitution and yet is considered a liberal state. The answer is that the British Constitution developed over many centuries (Maitland 1913, Pocock 1987); Britain's constitutional norms did not emerge over night but over hundreds of years. During much of that time, not only was the relationship of the sovereign and the citizens under contention, but so too were the rights of citizens and the limits on the state. Indeed, a critical set of political controversies — including a Civil War in the 1640s and the Glorious Revolution 40-odd years later — was required to settle a series of fundamental constitutional issues. The former communist regimes, in contrast, do not have the luxury of a slow evolution over decades or centuries. The three-step proposal for a new constitution reflects an attempt to create the missing coordination device during a period of considerable openness following the fall of Communism.

A second question asks, why is a new constitution necessary at all? What is wrong with revision of the old one? In principle, an ad hoc set of revisions to the old constitution might approximate a new one while saving the time, energy, and focus of officials and citizens. That saving, in turn, would allow everyone to focus on seemingly more pressing transition problems.

Our model shows why the ad hoc reform of an existing constitution is inferior. The old constitution is associated with a failed regime that citizens now widely regard with considerable contempt or reproach. It is

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<sup>15</sup> Ackerman also recommends a fourth step, namely, that delegates to a constitutional convention be elected. Because we know too little about the conditions that produce a workable constitution, I am not convinced about this condition. The advantage is that it presumably endows the end product with additional legitimacy. The disadvantage is that it makes it less likely that a coherent and workable document is produced (Riker 1987). Moreover, the two conventions used by Ackerman to support his views — those producing the United States Constitutional and West Germany's Basic Law — worked under special conditions that cannot be expected to hold in general. In the first instance, the main opposition, the Anti-federalists, chose to boycott the convention in an attempt to deny the result with legitimacy (Riker 1987). Had they attended, an altogether different document would have been produced, and it is hard to imagine that something as coherent — or as successful — would have emerged. In the second case, the occupation implied that only a limited set of constitutional principles would have proved sufficiently satisfactory to have induced the Allies to return power to the Germans.

the source of opprobrium, not veneration. Ad hoc revisions start with a document that no one holds in esteem. The process then undertakes a series of piecemeal revisions. This exacerbates rather than resolves the coordination problem that a constitution must be designed to resolve. Ad hoc revisions, taken one at a time and usually in the context of specific policy or political controversies, imply that citizens will have a wide range of views about their appropriateness. The final product will in no sense attain the consensus-like support necessary to help citizens police the government.<sup>16</sup> A strategy of ad hoc revision also implies that the set of restraints on government is always in flux. This makes it easy to rationalize one more change. With a constantly evolving constitution, groups are likely both to seek and support new changes that benefit themselves. In this context, the constitution cannot serve as a barrier to prevent the regime from violating fundamental rights of others. Put simply, when the process of revision does not stop, what are citizens to protect?

The diversity of opinion affords the government the ability to violate or simply alter the constitution's provisions in the future. Ad hoc revision fails to provide for limited government because citizens will not agree on which provisions need to be defended.

In contrast, a newly created constitution, brought before the public as a single package, has a chance of inducing the widespread citizen support necessary to police constitutional limits. Even though the vast majority may wish some alternation in such a constitution, because they disagree on how it should be altered, all may be better off when they act to maintain it. If one group can rationalize changing the constitution for its own private purposes, so can another, allowing political actors to alter or ignore the constitution when it proves inconvenient. On the other hand, when the constitution becomes a set of restrictions which citizens seek to defend, political leauers will find it in their interests to honor it. Again, to quote Ackerman:

Once leaders sign the constitutional text, they will find it harder to play fast and loose with it to serve their short-run interests. . .

A very different situation obtains when the constitutional order emerges from ad hoc adaptation of norms inherited from the old regime. **Why should either the political elite or the mass of**

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<sup>16</sup> Indeed, as Ackerman (1991, 57, emphasis in original) suggests, "the result is a legal hash and a symbolic embarrassment; surely there can be no *legitimate* order."

**ordinary citizens look upon brazen violations of such a text with grave concern?** The question is even more pertinent when, as has been the case, ad hoc modifications are not made in a considered fashion and are not referred to the general electorate or ratification through a plebiscite. (Ackerman, 1992, 62 emphasis added)

Put simply, ad hoc revision fails to produce the appropriate constitutional norms among the citizenry. Without endowing the constitution with a degree of legitimacy among the citizenry, deviations from the constitution can easily occur when there are obvious beneficiaries to support the deviation.

A difficulty similar to that of ad hoc revision may arise with a new constitution if it contains a nebulous clause allowing the government to assume extraordinary powers under vague and unspecified conditions. As a variant on this circumstance, the constitution might contain a set of clauses providing for seemingly strong individual and private rights yet, in another clause, allow the government to violate those rights under circumstances that it may determine. Such clauses were common to the Communist constitutions. For example, though the constitution of the Union of Socialist Republics adopted in 1977 guaranteed major liberties, Article 39 stated that the "[e]njoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state, or infringe the rights of other citizens" (quoted in Siegan (1992, 42).

Unfortunately, such provisions do not only appear in the former Communist constitutions. Siegan (1992, 44) reports that although the short-lived Czech and Slovak charter provided that the "sanctity of the home is inviolable," it also allowed the state to interfere with those rights "if it is essential in a democratic state for protecting the life or health of individuals, for protecting the rights and freedoms of others, or for averting a serious threat to public security and order." The Constitution of the Republic of Bulgaria, adopted in July 1991, exhibits the same duality. To quote Siegan:

According to Article 37(1), "Freedom of conscience, freedom of thought, and choice of religion or religious or atheistic views are inviolable." However, Article 37(2) provides "Freedom of conscience and religion may not be detrimental to national security, public order, public health and morality, or the rights and freedoms of other citizens." (Siegan 1992, 46)

The problem with such clauses is twofold. First, they obviously lack specificity. No specific meaning inheres to phrases such as "national security" and the "public order or morality." Because they can be interpreted to fit any circumstances, they offer no restrictions at all. Second, the very government whose powers are supposedly being limited by the constitution has the power to define the meaning of the nebulous circumstances that allow the abridgement of freedom and rights. As long as the government itself interprets the meaning of these provisions — and in the absence of a strong tradition of an independent judiciary as the final arbiter of those meaning — these qualifications effectively nullify the former provisions.

This conclusion is easily seen within the theoretical framework developed above. Without prior specification, a nebulous phrase such as the "public order and morality" implies that citizens will disagree on its meaning. In any particular instance — especially in the event of a crisis — their interests of the moment are likely to define their willingness to support the government in a particular use of this phrase. This, in turn, provides the government with the support necessary to take actions that abrogate the rights of some while it retains the support of others. The lack of consensus surrounding a nebulous phrase prevents citizens from defending rights specified elsewhere in the constitution.

### **Implications**

Protecting individual rights and providing for limits on government requires that the government attain a degree of *legitimacy*. Within the framework developed above, a government attains legitimacy under two conditions. First, when a consensus emerges about the appropriate limits on the state. Second, when the government respects those limits. According to the model, these conditions require citizens to resolve their coordination problems and react in concert to potential violations of the limits on government.

The former Communist regimes have obvious problems in fostering the emergence of legitimacy. The repressive traditions of the former regime made open discussion of these issues impossible. The sudden fall of communism has thus yielded a new society of individuals with, first, markedly different positions, interests, and values, and, second, no mechanisms for arriving at agreement over these fundamental issues. Under such circumstances, a consensus about the appropriate role of government is unlikely to emerge without considerable help. For these regimes, a new constitution, ratified by the public and yielding newly elected officials may provide an important component of such legitimacy.

Two further implications are worth emphasizing. First, creating a constitution endowed with sufficient respect is a critical political step necessary to underpin the emergence of a new market in the former Communist regimes (Weingast 1993). Without the appropriate — and self-enforcing — limits on government, a successful market economy cannot be sustained over the long-run. If their enterprises and ventures do not hold the prospect for being sustained, entrepreneurs and investors will not take the risks necessary to make the reforms work.

Second, there is nothing inherent in the process of establishing limited government that guarantees its success. The difficulties in coordination are significant, and many or all of the former communist regimes may fail to achieve it. This conclusion may be restated to underscore its unambiguous component: In the absence of an effort to surmount the difficulties identified in this section, democracy cannot be sustained in the former Communist states.

## **6. Ethnification in the Former Communist Regimes**

Outbursts of nationalism — and especially its extreme form, the ethnification of politics — have occurred in many former Communist states. The process of ethnification consists of a set of politically interrelated strategies (Offe 1992). First, it involves attempts to modify political boundaries, by armed aggression if necessary, so that they conform to ethnically homogenous regions. Second, the status and rights of individuals are differentiated according to ethnic affiliation. Third, ethnicity becomes the dominant political cleavage in society: "policies are proposed, advocated and resisted and political parties and other associations formed, in the name of fostering well-being of one ethnic community while excluding those who don't belong" (Offe 1992:21).

Varying degrees of ethnification have appeared in a surprising number of former Communist regimes, including war in former Yugoslavia among the Serbs, Croats, and Muslims; ethnic violence in the Abkhazia region of Georgia; hostility between many of the new republics of the former Soviet Union such as Armenia and Azerbaijan; threats and counterthreats concerning the ethnic Hungarians living in Slovakia, Serbia, and Romania; claims and counterclaims between Greece and the incredulously named Former Yugoslav Republic of Macedonia; and struggles between the Baltic states and Russia over the former's treatment of Russians.

These events generate a paradox. From the standpoint of Westerners, the central problem facing these states seems to be political and economic

transition, that is, of transforming the state and economy into an integrated system that can provide political and economic security for its citizens. Instead, we observe intense political struggles that make the seemingly more primary tasks impossible. Ethnification has several dimensions of economic costs. It wastes enormous resources, shutting down major portions of the economy at a time when resources are scarce. Moreover, by ensuring a smaller common market with lower economies of scale, ethnification yields a society with a lower social surplus. Put simply, those pursuing ethnification appear willing to forgo considerable gains from exchange in order to achieve their goals.

This implies that all members of these societies — including those initiating ethnification — can be made better off were they to attend to the pressing problems of transition rather than pursue ethnification. The obvious willingness to expend resources, ignore pressing problems, and forego a larger social surplus profoundly challenges the rationality of ethnification: why are they pursued?

#### **The initiation of ethnification in the former Communist regimes**

The fall of the Communist regimes has created a vacuum that is particularly thorny in plural states. The most basic decisions must be made: Who are citizens and what are their political and economic rights? How are the assets of the former regime to be divided? Who is to be advantaged in the creation of a new society? Because these questions must be addressed early in the new regime, more is at stake in the initial period than during the normal politics of an on-going regime. The once-and-for-all nature of these decisions means that being cut out now implies being cut out for a long time, if not forever.

The problem of the initial specification of rights, etc., implies not only that the stakes in settling those questions are high, but that there is a large advantage in a dispute over them to those who hold power. The approach developed above has obvious relevance here, for ethnic diversity implies that individuals in different groups are unlikely to agree on fundamental questions about the state, making the asymmetric equilibria highly likely. Yet something is missing from that approach to the problem of ethnification. As with the repeated prisoners' dilemma, the game analyzed above repeats the same "stage game" each period, i.e., the available choices and payoffs in one period do not depend upon choice made in previous periods.

The once-and-for-all nature of the initial specification problem, in contrast, implies that the initial action of the players may change the game. Those who are cut out in the beginning are disadvantaged forever as a

group out of power cannot easily retaliate against those in power who have initiated the ethnification process against them. As Offe (1992, 23) suggests, "the ethnic groups in Eastern Europe are well aware that now is the time when territorial and legal resources are being distributed which will determine the relative position of the people involved for the indefinite future. Both of these assessments, indeterminacy and urgency, are apt to inflame ethnic and chauvinist sentiments." It is the complete absence of a specification of rights that makes this particular problem different from those studied above.

All this implies that, in plural, former Communist societies, reciprocal mistrust generates a competition for state power. Even if the first group, in power now, forgoes the opportunity to initiate the process of ethnification and instead establishes universalist criteria, it cannot commit the state to them. If another group captures power and decides not to behave reciprocally, the first group is at a striking disadvantage. This implies that, "given the stakes involved, **the overwhelming premium is upon creating *faits accomplis*** and letting the argument of greater force decide, as in the Yugoslav civil war" (Offe 1992, 23).

Thus two aspects of the fall of the Communist regimes concern us, the initial specification problem and the size of the stakes. These are discussed in sequence.

**(1) The initial specification.** To see the logic implied by the initial specification problem, we consider a simple game known as the "relationship game." This involves two individuals who are in a relationship that requires reciprocal trust in order for both players to obtain the most from it. Each may, however, take advantage of the other by unilaterally quitting the relationship.

The game is illustrated in figure 3. Player A makes the first move and may either trust her partner, B, or quit the relationship. If A decides to quit, then she receives 7, B receives 0, and the game ends. If A decides to trust B, she receives 5, B receives 5, and the game continues. In the next stage, B must decide whether to trust or quit. If B quits, B receives 7, A receives 0, and the game ends. If B trusts, both receive 5 and the game continues, allowing A the decision as to trust or quit. The game thus terminates when any player decides to quit. Alternatively, if each player chooses to trust, the game can last indefinitely, with each receiving 5 per period. The Pareto optimal solution to this game occurs when both parties trust each other.

The relationship game has two polar equilibria (assuming that both players value the future, i.e., that discount rates are not too high). The equilibrium which maximizes total payoffs results when both parties trust

each other. If A believes that B will trust rather than quit, she gains from trusting as well. The same holds for B in the next round, A in the following round, and so on. A second equilibrium also exists in which neither partner trusts the other. If A does not believe that B will choose to trust in the second round, then A will choose to quit in the first. Mutual lack of trust is thus an equilibrium. Neither player, acting alone, can do better by behaving differently.

The mutual mistrust equilibrium provides an important insight into the problem of ethnification. It is a stable pattern despite being costly to both sides.

Nonetheless, ethnification — i.e., mutual distrust — is not the only equilibrium to this game. The prevalence of ethnification in the former Communist regimes suggests that it is not happenstance that the mistrust outcome appears far more likely than mutual trust. Other factors are likely to be present than those captured by the simple relationship game. A significant one concerns a presumption embedded in this model, namely, that the first period relevant for the game is that immediately following the fall of Communism. This assumption reflects the sudden thrusting of several ethnic groups into a position of mutual interaction in an environment in which few of the constraints of the former regime survive. What the assumption ignores, of course, is an extensive history of past interaction that began long before the Communist regime. Indeed, in many cases, centuries of mutual hostility and violence inevitably affect the calculus about decisions made today.

This observation suggests that, at the inception of the new, post-Communist regime, there is considerable uncertainty about whether each group will act on past grievances or, instead, will seek to cooperate in solving today's problems. If past grievances dominate the view of either group, it will initiate violence as a means of retaliating for past actions. This complicates the structure of the game in a natural way.<sup>17</sup>

Again, consider the decision for group A. If past grievances loom large in A's view, it will initiate ethnification despite future opportunities foregone. Suppose, however, that these grievances do not dominate and that it is potentially willing to focus on solving today's problems. When making its decision to trust, A must assess how B weighs its potential grievances. If A expects grievances to dominate B's decisionmaking, then

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<sup>17</sup> The game can readily be adapted to provide the following results by incorporating the standard argument about "types." Each player is one of two types: the first focuses solely on past grievances, the second only on the future. In the adapted game, each player will have a set of beliefs about the probability that its opponent is of the first type.

it will expect that B will not trust when faced with that choice. Thus, the more likely the other is to focus on past grievances, the lower the expected payoffs from trusting and hence the more likely will A choose to initiate ethnification.

Thus the model reveals that there are two distinct reasons why A might initiate ethnification. First, if it is focused on past grievances, it will willingly forego future opportunities in order to punish its potential partners for past deeds. Second, even if it is potentially willing to cooperate with its partner, if it expects its partner to focus on past grievances, it will initiate ethnification in order to avoid becoming the victim. Both translate into a bias against the trusting equilibrium.

The lack of credible bargains is thus an important component in the initiation of ethnification. If both sides could credibly commit to forgo ethnification, total social surplus would be higher and each would be better off. In the context of the sudden fall of Communism, however, they cannot do so. The first mover advantage combines with the lack of trust to yield a striking vulnerability to any side that decides to trust the other. A rational basis for mistrust exists because there is no mechanism by which each can guarantee that it will not take advantage of the other when given the opportunity.

**(2) The stakes.** Several literatures in economics and political-economy are relevant for the problem of the lack of an initial specification of rights. These include that on "winner-take-all markets" (Frank and Cook 1992), rent-seeking (Tollison 1982, Keefer 1992), property rights (Barzel 1991, Libecap and Wiggins 1984), and the "war of attrition" (Fudenberg and Tirole 1992). Although the approaches and methodologies in these literatures differ considerably, they all yield similar conclusions.

Suppose a valuable "prize" — e.g., a set of goods or rights — is at stake and that a number of different individuals or groups would like to possess the prize. The lack of an initial allocation of the prize generates a degree of competition among the different agents. Moreover, those competing for the prize will be willing to expend resources to the extent that those resources affect the chances they capture the prize. Third, and most fundamental for our purposes, in the aggregate, the competitors are willing to spend up to the value of the prize itself to capture the prize.

The reason is straightforward. Suppose that two players seek a single prize and, for simplicity, that the game is symmetric, i.e., if they expend the same amount of resources and effort, they have an equal probability of capturing the prize. If both expend a level of effort, the odds are fifty-fifty. Similarly, if both expend a high level of effort, the odds remain at fifty-fifty. On the other hand if one player expends a low level, the other

can increase his chances by expending a high level. This induces both to expend more effort, much as in an arms-race. In the limit, the four literatures show that the total spent competing for the prize equals the value of the prize.<sup>18</sup>

These results are directly relevant for ethnification. Because no set of rights is stable and well-defined, everything is potentially at stake, implying that the different groups will expend considerable resources for right to establish those resources — or to prevent the other group from doing so. This process induces individuals and groups to expend huge amounts of resources and to forgo considerable future economic gains because all of future welfare is at stake. In the limit the competing groups are willing to expend or forgo not only this year's GNP, but all of future GNP. Again, the lack of credible bargains prevents the different groups from making an agreement by which each forgoes the opportunity to compete.

#### **Implications of Przeworski's approach to self-enforcing democracy**

Przeworski's (1991) discussion of self-enforcing democracy helps put these results in perspective. As he observes, a critical problem for democracy is that incumbents lose. This raises a fundamental question: Why would a losing party accept its loss? Why would it not instead attempt to subvert the democratic process in order to retain power? His answer is that for democracy to be sustained it must be "self-enforcing," i.e., it must be in the interests of the losers to accept their loss.

An incumbent party that has just lost an election has two options: It may either accept its loss or it may attempt to subvert the democratic process in order to remain in power. The incumbent's payoffs associated with these outcomes are  $L$  and  $S$ , respectively.<sup>19</sup> For there to be a potential compliance problem, it must be that  $S > L$ .

What will the loser do? If it considers solely its immediate interests, it would clearly attempt to subvert since  $S_0 > L_0$  (the subscripts indicate time period, set at 0 for the initial decision). Yet, democratic institutions provide the opportunity for winning tomorrow. If the defeated incumbent complies in this round, its expected payoff from the next round is  $C_1 = pW + (1-p)L$  where  $p$  is the probability that it wins the next election. This provides the formula for compliance. Today's losers will comply when the

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<sup>18</sup> Naturally there are some qualifications to this result. For our purposes, however, the point is not whether the total resources devoted to competition exactly equals the value of prize. The point is that it is typically of the same order.

<sup>19</sup> Note that  $S$  reflects the expected value of this strategy and hence includes the risk of and punishment following failure.

expected gains from accepting the loss exceed those from subverting, i.e., when the following inequality is satisfied:

$$L_0 + C_1 > S_0 + S_1.^{20}$$

Przeworski's analysis suggests two comparative statics results about the likelihood of compliance. Both follow from observations about characteristics of successful constitutions. The first holds that "Constitutions that are observed and last for a long time are those that reduce the stakes of political battles" (p. 36). The institutional restrictions of successful constitutions provide credible guarantees of rights of individuals and limits on governmental decisionmaking. This affects the above calculus by lowering the costs from losing. Or, in terms of the formula for compliance, it raises  $L_0$ , making compliance more likely.

Przeworski's (1991, 36) second observation is that "successful democracies are those in which the institutions make it difficult to fortify a temporary advantage. Unless the increasing returns to power are institutionally mitigated, losers must fight the first time they lose, for waiting makes it less likely that they will ever succeed." Thus a second factor reduces the costs of losing: Winners are limited in the degree to which they can bias or subvert the system to increase their own prospects of winning. In terms of the formula of compliance, this prevents tomorrow's incumbents from substantially lowering  $p$ , again, making compliance by today's defeated incumbents more likely.

These comparative statics results underscore the political dilemma facing the potential initiators of ethnification. The terms of compliance in a democratic regime parallel the decision to trust during the transition period. When will an ethnic group choose to pursue a peaceful, political solution to their state's problems instead of initiating ethnification, i.e., to subvert that process?

First, the stakes are high, perhaps as high as they can be: Everything is potentially at risk in the once-and-for-all definition of the state itself. Hence, as Przeworski emphasizes, the costs of losing are high. Second, because there is an advantage to initiating ethnification, losing that battle makes it difficult to punish the initiator. No widely regarded, successful constitution exists that limits the potential costs of losing and that prevents an initiator of ethnification from completely subjugating the victims. The stakes are total and the possibility of capturing power, once the other side has initiated ethnification, are remote. In sum, Przeworski's perspective,

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<sup>20</sup> Following Przeworski, this analysis ignores for simplicity the terms beyond period 1.

like that above, yields a rather pessimistic view for the prospects for a peaceful resolution of ethnic conflict in these societies.

### **Implications**

The perspective of this section provides an initial approach to modeling the problems of ethnification. It is simple and ignores a large number of aspects of the problem considered important. Two are worth mentioning here: First, the well-known and important role of elites — as distinct from citizens — in fanning the flames of ethnification has been ignored. Second, the equilibrium outcome of the game clearly depends on the very simple representation of the payoff and choice structure.<sup>21</sup>

In spite of its weaknesses, I believe the model emphasizes a central aspect of the ethnification problem. As Offe (1992) emphasizes, ethnification must be understood as a rational response to the lack of state stability found in the wake of the fall of Communism:

Given the situation in which individual and collective actors find themselves in post-communist Eastern Europe, ethnification appears rational to them. Thus, it is no longer enough to convince the political leaders of these societies that ethnification is inconsistent with Western standards of universalism and political modernization, standards to which they themselves supposedly aspire. What is called for is not moral exhortations but a change in the parameters of action of these leaders that would make it both preferable and affordable for them to refrain from pursuing strategies of ethnification. (Offe 1992, 23)

The problem is twofold. First, ethnification advantages the initiator. Though total surplus is lower, the initiator captures a positive payoff today and protects itself from being victimized in the future rounds. Second, the

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<sup>21</sup> Two other problems are: First, the game ends when any actors "quit," i.e., initiates ethnification. In reality, the society continues with an economy that produces a lower social surplus whose distribution is skewed toward the group that quit. Second, the game ignores the mechanisms of ethnic cohesion. The appeal to history and past grievances is clearly a simplifying assumption. A related problem for these societies is that, in comparison with other plural states, because the former Communist regime actively obstructed the formation of other associations, the new state finds itself an "associational wasteland" (Offe 1992). Thus, there is a marked absence of associations that span ethnic groups. This leaves ethnicity as a primary source of organization and hence by which individuals can understand and react to political events.

group choosing first faces a significant dilemma, even if it prefers to ignore past grievances. Although its most preferred outcome is mutual trust, if it deems that its partner is likely to focus on past grievances, then it cannot depend on the latter to trust and, therefore, will itself choose not to trust. The structure of the problem faced by these regimes induces a lack of trust.

This approach provides an important insight into the on-going problems in former Yugoslavia and elsewhere in Eastern Europe. These conflicts persist in spite of the large costs. In the absence of an ability to ensure credible limits on the state, ethnification is, sadly, a rational strategy.

Is ethnification therefore inevitable? The answer is twofold. First, if left to themselves, these states are highly unlikely to resolve their problems. Second, outsiders may in principle play a role that makes it less likely. Most of the debate about outsiders emphasizes the use of military strategies. Although these may play an obvious role in changing the participants' incentives, if all that occurs is a military occupation by superior forces, it will not resolve the problem. As soon as the occupation is lifted, the problem will return.

Providing for a permanent solution to these problems requires that outsiders focus on the problem of credibility. Lowering the returns from violence can be accomplished by the threat of reoccupation. Beyond that, however, it is necessary to provide for political institutions that reduce the stakes in the political game, i.e., that provide an initial specification of political and economic rights. Moreover, the model of successful, plural states in Western Europe points to the value of institutionalizing a structure of decentralized political decisionmaking on issues subject to the most intense ethnic conflict. These are tall orders and, moreover, may not succeed even if they are attempted.

## **7. Conclusions**

The purpose of this paper has been to develop a unified approach to the political foundations of limited government, democracy, and the rule of law. The unifying theme among these problems is the role of stable, widely accepted boundaries on the state. The approach rests on the following logic. First, the views, attitudes, and beliefs of citizens about the appropriate limits on the state are critical for understanding the ability to maintain these limits. Second, this implies that underlying the attempt to maintain boundaries on the state is a massive social coordination

problem. The natural diversity of individual interests and experiences implies that individuals are unlikely to have similar views about the role of the state, the appropriate limits on state action, and the rights of citizens. Thus, the most natural consequence is coordination failure: Citizens are unlikely to achieve coordination without some form of organization, leadership, or other method of constructing a focal solution to their problem.

The coordination problem has two implications for the maintenance of limits on the state. First, given that the state requires a degree of support among the citizenry to survive and maintain its position, when citizens agree about the appropriate limits on state action, violating those limits results in the withdrawal of citizen support and hence the state loses its power. In the face of such agreement, these limits become self-enforcing, for the threat of citizen reaction makes it in the interests of political actors to observe them. On the other hand, when citizens disagree about the appropriate limits on state action, the state can violate what some consider their fundamental rights while still retaining the support needed to survive from others. The problem of coordination is also exacerbated by politics. Because the positions and interests of citizens differ considerably, violations of the rights of one group often benefits another. For example, the expropriation of wealth can easily focus on specific economic groups or sectors — large landowners, workers, merchants in international trade. These distributional issues make coordination more difficult as some citizens may form a coalition with the state that benefits them and allows transgressions against others. The power of the state to set policy affords it a degree of latitude to pick a set of beneficiaries whose interests are compatible with its own. In the absence of a consensus about the boundaries of the state, such a coalition is stable once it is formed. Thus, the most natural consequence — and the equilibrium to the game — is that citizens cannot police limits on the state. This pattern is stable and enduring.

The second implication concerns the resolution of these problems. In the face of the stable equilibrium lacking coordination, establishing limits on the state requires *constructing* a coordination device. An important instance of such a device is the writing of a widely accepted constitution that specifies clear and unambiguous limits on the state. And yet, such a device cannot be established at just any time. A state without limits typically transgresses the rights of some citizens while benefiting — and retaining the support of — others. This pattern is stable because the state and its constituents benefit from this circumstance, though those citizens being harmed do not. Breaking this pattern is therefore difficult. It

requires something that significantly alters the underlying structure of the game. Perhaps the most common example is that some form of crisis occurs in which the status quo cannot be maintained. This forces the state and its citizens to arrive at a new bargain, and that may include resolving the coordination problem.<sup>22</sup> Another example is that the potential gains from establishing rights for the victims increase, affording the other players the opportunity to cease their transgressions without a significant fall in their own welfare.

This discussion suggests that constitutions of limited government cannot be established at just any time. The nature of equilibrium implies that, unless something perturbs it, it is stable. Thus, there may be "constitutional moments" that reflect a set of circumstances in which the previous equilibrium has been disturbed.

This view also emphasizes the complementarity between formal institutions such as a constitution and informal social norms such as a consensus among citizens about the appropriate limits on government.<sup>23</sup> In order for the formal institutions of limited government to survive, they must be held in sufficiently high esteem that most citizens are willing to defend them. A central feature of this complementarity concerns those citizens who stand to benefit from potential violations of the limits on government. Maintaining those limits requires that potential beneficiaries do not support such a proposal. Only in this way is the government deterred from making such proposals. When, in contrast, citizens support such proposals, the government can violate the limits on government while retaining sufficient support to survive. In states characterized by limited government, citizens react against violations (as the failure of Roosevelt's court packing scheme illustrates), whereas in states not characterized by limited government, citizens may support a wide-range of violations (as illustrated by a range of constitutional violations and coups in South America).

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<sup>22</sup> Cases of dramatic institutional change in the face of crises have long been noted. Schumpeter (1918) emphasized financial crises (see also North 1981 ch. 11). The fall of Communism provides another obvious example.

<sup>23</sup> Several authors make this point in a variety of contexts: North (1990, 1993) in economic history and development; Clague's (1992) for development; Ellickson's (1991) for the law in general; Ferejohn's (1990) for elections to Parliament in the 16th and 17th centuries; Greif's (1992) on medieval contracts; Tirole's (1992) on corruption; and Weingast (1993) in several settings (18th century England, 19th century United States, and modern China).

This paper has focused on the informal mechanisms supporting a constitution, abstracting from the latter's specific features. The claim of the complementarity between formal institutions and informal behavior thus remains nebulous. The focus is not intended to suggest that the informal mechanisms are more important, but, instead, to emphasize the importance of informal mechanisms for supporting formal institutions. An illustration may therefore serve to provide sufficient concrete detail to suggest that the two are on equal footing.

It is widely recognized that one of the critical consequences of the Glorious Revolution for English history was the elevation of Parliament to full partnership in the government of England (Brewer 1989, Jones 1972, Miller 1992, North and Weingast 1989). Thereafter sovereignty was no longer lodged with the king but with the "king in Parliament." Yet why did the crown, having agreed to grant Parliament a direct say in government abide by it? The answer is that the new consensus greatly raised the costs of ignoring Parliament, as many kings had done in the past (Weingast 1992). Put another way, the agreement between the crown and Parliament was self-enforcing. The new ability of citizens to act in concert implied that the penalties for ignoring Parliament had increased, making it in the interests of the crown to honor rather than ignore the agreement.

Consider two specifics. Throughout the seventeenth century, Parliament's right to raise taxes was regularly evaded by the Stuart kings, in large part because the latter were able to retain the support of their constituents. After the Glorious Revolution, it is doubtful that the crown could have survived had it attempted to raise taxes without the consent of Parliament.<sup>24</sup> Economic liberty was thus far more secure.

As a second example, loans after the Glorious Revolution became acts of Parliament; therefore their terms could only be revised by another act of Parliament. As the wealthy elite who subscribed to these loans were well represented in Parliament, this effectively gave them a veto over changes in the terms of the loans. During the Stuarts' reign, in contrast, the crown not only retained the unilateral right to revise these terms, it used that right sufficiently frequently that few lenders were willing to provide funds. The restrictions brought about by the Revolution made default much less likely and hence dramatically improved the willingness of lenders to provide funds. As a consequence, government borrowing increased nearly an order of magnitude following the Revolution, and it

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<sup>24</sup> "[N]o king after 1689 dared on his own to tax English subjects either directly or indirectly" (Schwoerer 1981, 289).

used these funds to beat the superior France in a series of wars (North and Weingast 1989, Weingast 1992).<sup>25</sup> Without the ability to prevent the king from ignoring Parliament, however, the new financial mechanisms would not have proved so successful.

Both examples illustrate the critical consequences of formal institutions. Yet these institutions could not have survived without the support of the informal mechanisms studied above. The illustrations also reveal a general conclusion about the complementarity of formal institutions and informal mechanisms: The informal mechanisms — the potential reactions of citizens — make the formal restrictions self-enforcing on political actors.

The view developed in this paper has significant implications for a series of problems with democracy, the rule of law, and the maintenance of limited government. These are considered in turn.

**Stable democracy.** The maintenance of a stable democracy depends on more than just the formal institutions of democracy such as elections, representation, and legislatures. It also depends upon the appropriate set of citizen attitudes about those institutions. Not only must citizens value the outcomes of democratic decisionmaking, but they must value the institutions themselves. Citizens must be willing to defend those institutions against potential violations by withdrawing their support from a regime that proposes to violate them.

It is this behavior — this citizen duty — that differentiates stable democratic states from unstable ones. It is one thing to impose the formal democratic apparatus on a society and another to develop the appropriate set of citizen attitudes necessary to maintain those institutions. The absence of the appropriate set of citizen attitudes underlies the instability of large numbers of democracies. The most natural equilibrium is the failure of citizens to come to agreement about the appropriate limits on state action.

The intimate relationship between formal and informal mechanisms of limits on the state has an additional implication. Those studying the formal institutions of society may well miss a critical aspect of governmental performance and stability because they do not investigate how the formal

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<sup>25</sup> Other examples abound. For instance, the success of federalism underpinning economic growth in 19th century America rested on sufficiently widespread support which, with the exception of the issue of slavery, prevented the government from violating these terms during that period. A similar interaction holds for the critical political decentralization underlying the successful Chinese economic reforms (see Weingast 1993 for details).

mechanisms interact with the informal ones. A common claim for example, is that political institutions are not that critical. The contrast between the structure similarity of democratic institutions in the United States and in South America on the one hand, and the divergence in democratic stability suggests to many that institutions must not matter. The view developed here suggests that this conclusion is inappropriate. The reason concerns the way the citizen attitudes interact with formal institutions. In the United States, the formal institutions combine with citizen reaction to make the limits on state action self-enforcing. The same does not hold in South America.

The view developed above also emphasizes the role of constructing a coordination device such as a constitution. To be effective in promoting and protecting the formal institutions of democracy, however, a constitution must be highly esteemed among the citizens. Thus, a constitution that succeeds in this role cannot be written and imposed at just anytime. It must occur at a time when citizens are willing to break the previous pattern. Indeed, the history of constitutions imposing limited government emphasizes the importance of such events: The Glorious Revolution in late 17th century England, the writing of the Constitution in late 18th century United States, and the major revision of the Swiss Constitution in the late 19th century all illustrate this principle and all resulted in dramatic political and economic change.

Perhaps the most important pragmatic implication of this approach is that providing a set of democratic institutions alone is insufficient to ensure democratic stability. The latter requires that a balance be struck among three components: political institutions, of which democracy is a part; citizen attitudes, and public policy. Too many advocates of democracy ignore that it must be lodged in a way that allows it to survive.

The importance of this point is most easily seen in the context of the former Communist regimes which are simultaneously facing problems of transition to democracy and markets. The problem is twofold: proponents of democracy nearly always ignore how political institutions affect economic outcomes (Przeworski 1991) and proponents of markets ignore the problem of embedding their economic recommendations within a larger political context that can sustain them. Transition to democracy and to markets are not separable problems that may take place independently; they are dual problems that must be resolved simultaneously.

**Establishing the rule of law.** One of the central features of limited government is the *rule of law*, a stable society of laws, not of discretionary

political power.<sup>26</sup> An important consequence of the rule of law is the establishment of reliance, that laws have value to citizens because they are predictable. Reliance founded on the rule of law is critical for economic success in large part because of the *fundamental political dilemma of an economic system*: A state strong enough to establish property rights and enforce contracts is also strong enough to confiscate the wealth of all its citizens. The rule of law is a minimal requirement for a state that seeks to avoid the latter.

Scholars typically provide stark contrasts between societies characterized by the rule of law and those characterized by the exercise of political discretion. Dicey, in his classic text on constitutionalism, raised Tocqueville's comparison of the United States and Switzerland in 1848:

In the United States and in England there seems to be more liberty in the customs than in the laws of the people. In Switzerland there seems to be more liberty in the laws than in the customs. . . the Swiss do not show at bottom that respect of justice, that love of law, that dislike of using force without which no free nation can exist, which strikes strangers so forcibly in England. (Dicey, 1914, 108-09)

Scholars studying Great Britain constantly emphasize the importance and effect of these attitudes. Rose (1965, 93-94), for example, states: "So strongly have libertarian attitudes been internalized by Englishmen that there has not been the need to protect them with the elaborate legal guarantees provided in the United States." The insights of the American Supreme Court Justice, Joseph Bradley, reflects the central insights of the view taken here:

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<sup>26</sup> Dicey, Hayek, and Leoni provide three classic statements of rule of law. According to Dicey (1914, 110-15), the rule of law has three characteristics. First, no "individual is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land." Second, no individual is above the law. Third, there must be a guardian and defender of the law and individual rights, typically the courts. Hayek (1960, pp. 170-71) draws on Locke's *Second Treatise on Civil Government* to suggest that: "Freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it . . . and not to be subject to the inconstant, uncertain, arbitrary will of another man." It is against the 'irregular and uncertain exercise of the power' that the argument is mainly directed. . ." Leoni (1961, 75) states it is: "the certainty of the law' . . . that one requires in order to foresee that the result of legal actions taken today will be free from legal interference tomorrow."

The privilege and immunities of Englishmen were established and secured by long usage and by various acts of Parliament. But it may be said that the Parliament of England has unlimited authority, and might repeal the laws which have from time to time been enacted. Theoretically this is so, but practically it is not. England has no written constitution, it is true; but it has an unwritten one, resting in the acknowledged, and frequently declared, privileges of Parliament and the people, **to violate which in any material respect would produce a revolution in an hour.**<sup>27</sup>

As our model suggests, it is not merely the laws that provide for a limited government and the rule of law; a societal consensus about the appropriateness of those laws and limits must exist as well.

For the questions studied in this paper, a society characterized by the rule of law is one where the boundaries of the state are respected. Like culture, the rule of law is a societal characteristic. And yet, whether a society is characterized by the rule of law depends upon the attitude and behavior of individuals.

This demonstrates the importance of tailoring a legal regime to the specific needs and attitudes of citizens. In particular, a legal system designed in the west for implementation in a transition economy is unlikely to be successful unless embedded in the larger transition effort in a way that can sustain it. Like the problem of market reform generally, a legal system is of little use if it cannot be sustained.

An important component of the rule of law is the *civil society*, one allowing freedom to form associations without the need for official sanction of the state. It is clear that freedom of association is necessary for the rule of law. The right to form associations and organizations is central to the ability of citizens, not only to enjoy life, but to further their own interests and to police the actions of the states. As Schmitter (1986, 6) observes in the context of the transition to democracy,

for an effective and enduring challenge to authoritarian rule to be mounted and for political democracy to become and remain an alternative mode of political domination, a country must possess a civil society in which certain community and group identities exist independently of the state and in which certain types of self-constituted

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<sup>27</sup> Bradley's dissent in the *Slaughter-House Cases*, 1873 (emphasis added).

units are capable of acting autonomously in defense of their own interests and ideals . . . these identities and interests . . . must be organized for coherent collective action.

Our model provides an approach to the microfoundations of the rule of law. Because laws and political limits can be disobeyed or ignored, something beyond them is necessary to police deviations. Our approach argues that the attitudes and reactions of citizens make institutional restriction self-enforcing on political actors.

**Stable, free societies in the former Communist regimes.** The transition problems of the former Communist regimes are massive. Several problems must be solved simultaneously for stable free societies to emerge. As the economists stress, some form of market system must be devised. But that alone is hardly sufficient. At the same time, a new political system must be devised to create a democratic state. The political task of transition involves three components. First, the formal institutions of democracy must be created. Second, citizen attitudes must be compatible with democratic institutions. A set of democratic institutions, whatever their abstract or normative appeal, will not perform as expected if citizens do not value them sufficiently to defend them. Third, these attitudes and institutions must also be compatible with sustaining the new economic system (Przeworski 1991, Weingast 1993). If they are not, then the state will fail to adhere to its reform plan, regardless of how well the latter is grounded in economic analysis. This reveals the intimate relationship among political institutions, citizen attitudes, and economic performance. Any attempt to restructure these societies must take account of these interrelationships.

Unfortunately, most analyses seem to have ignored this lesson. Economists have paid too little attention to the problem of embedding their recommendations for economic reform within a political system that can sustain them. Such proposals may fail, not because microeconomics provides an inadequate guide to structuring an economic system, but because the political system proved incapable of observing the restraints implied by the system of property rights necessary to sustain the reform proposals.

Similarly, proponents of democracy have paid too little attention to the problem of whether a set of newly devised political institutions can sustain a viable economy. To do so, these institutions must provide a degree of commitment to economic and political rights that can sustain the expectations of the economic decisionmakers necessary to underpin long-run growth. Institutionalizing limited government requires more than

simply devising a system of elections and representation. As has long been known, majorities can be just as arbitrary and exploitive as dictators. Elections, representation, and the specific institutions of political decisionmaking must therefore be embedded in a larger constitutional framework that provides for adequate boundaries on political decisions so that the economic reform efforts can be sustained.

Embedding the economic reform process within the broader context of political reform thus seems crucial. Too little emphasized, the writing of a new constitution is critical to this process. The central problem for the creation of a constitution is to fit the three components of political transition together: citizen attitudes toward the appropriate boundaries of the state, democratic institutions of public choice, and market institutions that can be sustained over the long-run by those institutions. Only in combination can the constitutional restrictions on the state be self-enforcing.

Unfortunately, there is little in these new states that promotes harmony among citizen attitudes. While most are glad that Communism has passed, they disagree about a host of issues concerning where and how to go from here. The model suggests that, under these circumstances, the most natural equilibrium is the absence of coordination. This, in turn, affords a role for a constitution of limited government. Devised and ratified early in the new regimes, it may help resolve the massive coordination problem faced by members of these societies. By creating a coordination device, this strategy has the hope of establishing a set of widely valued constraints on the government (Ackerman 1992).

**Ethnification.** As Rabushka and Shepsle emphasize (1972), plural societies have special problems in maintaining democratic systems. First, individuals typically give their loyalty to subnational units. Second, they disagree, often profoundly, about the appropriate role of the state, the limits on government, and the nature of a good society. As our model shows, these factors imply that stable democratic regimes are very difficult to sustain. Disagreement about fundamental issues implies that citizens are highly unlikely to act in concert against proposed violations. Indeed, they are likely to be characterized by the lack of trust and attempts to subjugate one group or one-another.

This view has special implications for emergence of ethnification in the former communist regimes. While the most pressing problems of these societies concern peaceful transition to new economic and democratic institutions, many of these states have instead erupted in ethnic violence. Ethnification not only delays these important tasks, it imposes serious economic and political costs on the future society.

The approach developed above suggests that a major factor underlying ethnification is the inability of these groups to establish credible bargains with one-another so that neither side takes advantage of the other. These states have been thrust into a position of considerable uncertainty. By its very nature, the transition problem implies that there is no well-established definition about fundamental issues in society such as the form of political system, the nature of political and economic rights, and the division of the assets of the former regime. In this setting, there is a considerable advantage to the side that initiates ethnification. Because neither side can credibly promise to forego ethnification, it is rational for each to initiate violence in order to prevent themselves from being victims (Offe 1992). Moreover, this holds even if both sides would be, in principle, willing to forego ethnification — if only they could be assured the other would as well. The inability to commit credibly not to initiate violence makes such agreements impossible. Unfortunately, this implies that mutual distrust and violence are stable patterns.

This view suggests that there is a role for outsiders such as the United Nations. Beyond military intervention, it suggests that outsiders should help establish the relevant credible bargains among the relevant plural groups to establish and maintain a state of universalist criteria.

As Lijphart (1984) emphasizes, some plural states are capable of rising above their plural divisions to suppress ethnic problems. They do so in ways that reflect the lessons of this paper. Belgium and Switzerland have political systems based on political decentralization where it is difficult for national majorities — ones with potential ethnic biases — to impose policies on all. Instead, many issues on which the relevant groups cannot agree are decentralized, and, at the national level, it takes supra-majorities to alter these arrangements. Such a constitutional arrangement, in combination with the appropriate citizen attitudes, provides for a stable political system. Similarly, for much of this century, Holland also relied on a politically decentralized "accommodation" to limit political conflict among several religious groups (Lijphart 1975). Paralleling my argument above, Lijphart argues that this succeeded in part because all groups agree to maintain and defend the system of accommodation.

To return to the Balkans example, the advantage of the Belgium, Dutch, and Swiss models is that they provide one possible means for institutionalizing trust — i.e., for providing the relevant credible commitments binding states. Without doing so, there seems little hope for resolving the ethnic conflicts in the Balkans.

By way of summary, this paper has provided a unified approach to the problems of limited government, stable democracy, and the rule of law. It emphasizes the complementary of the formal institutions of society and informal social mechanisms: Maintaining formal institutions — including the rights of citizens and other limits on government — requires a societal consensus about the importance of defending them against potential violations. The approach reveals how the informal mechanisms of citizen reaction can provide for the self-enforcement of limits on government. Because these reactions affect the incentives of political actors, they determine whether the restrictions on government are binding.

A principal consequence is that the components of reform must be addressed simultaneously. Because a political, legal, and market systems interact, they cannot be designed by independent processes.

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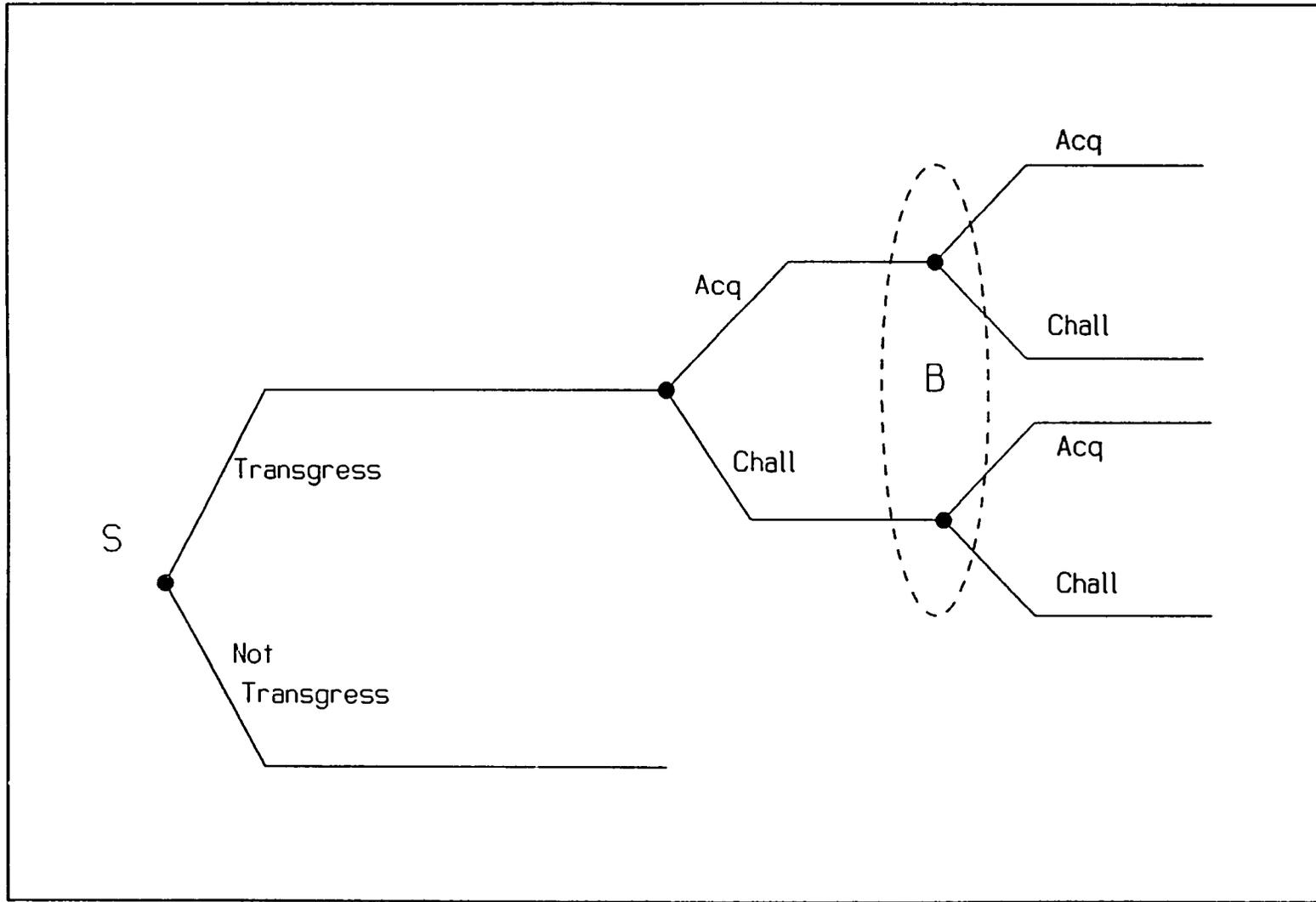


Figure 1: Sovereign-Constituency Coordination Game.

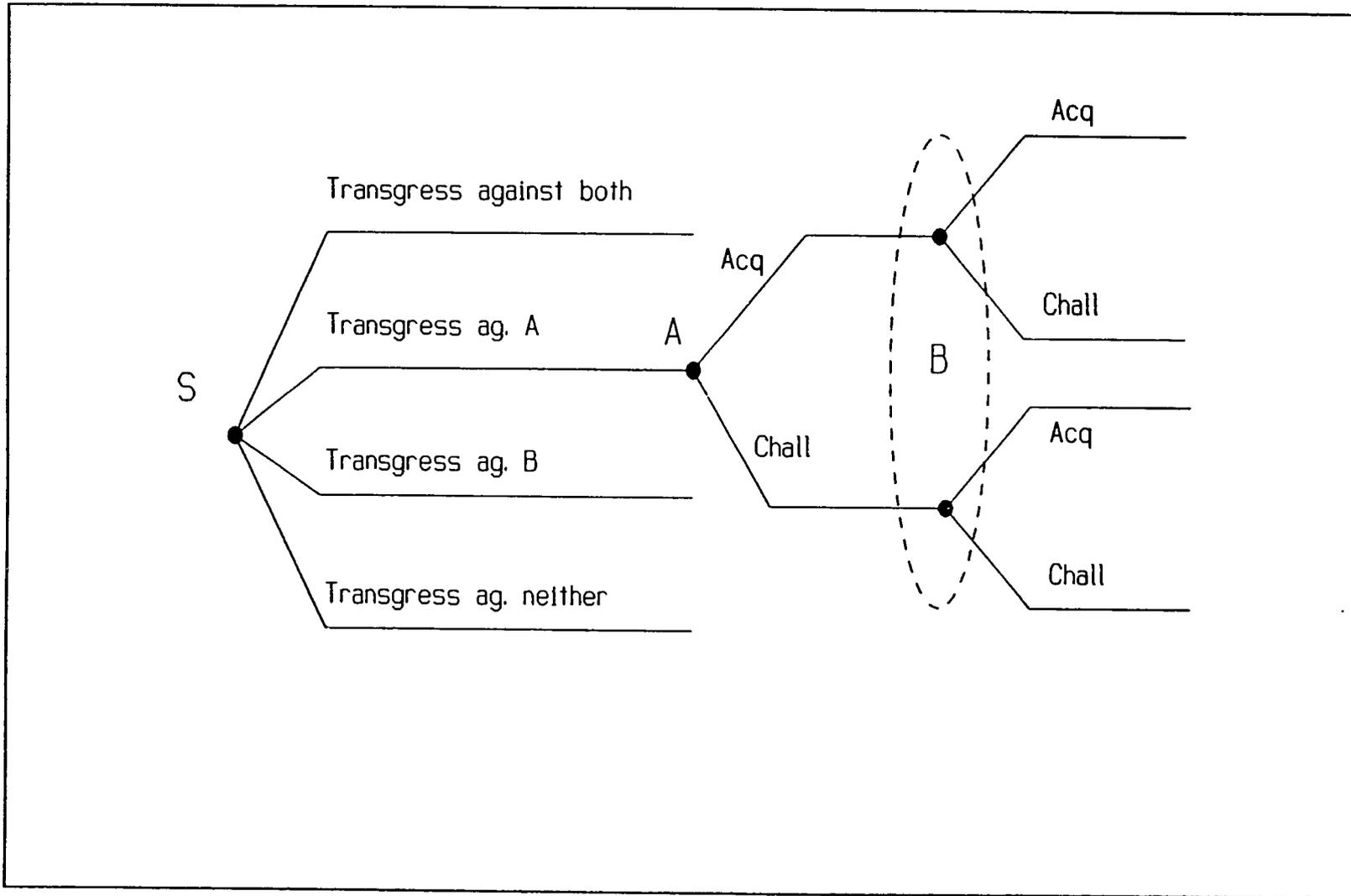


Figure 2: The Sovereign-Constituency Transgression Game.

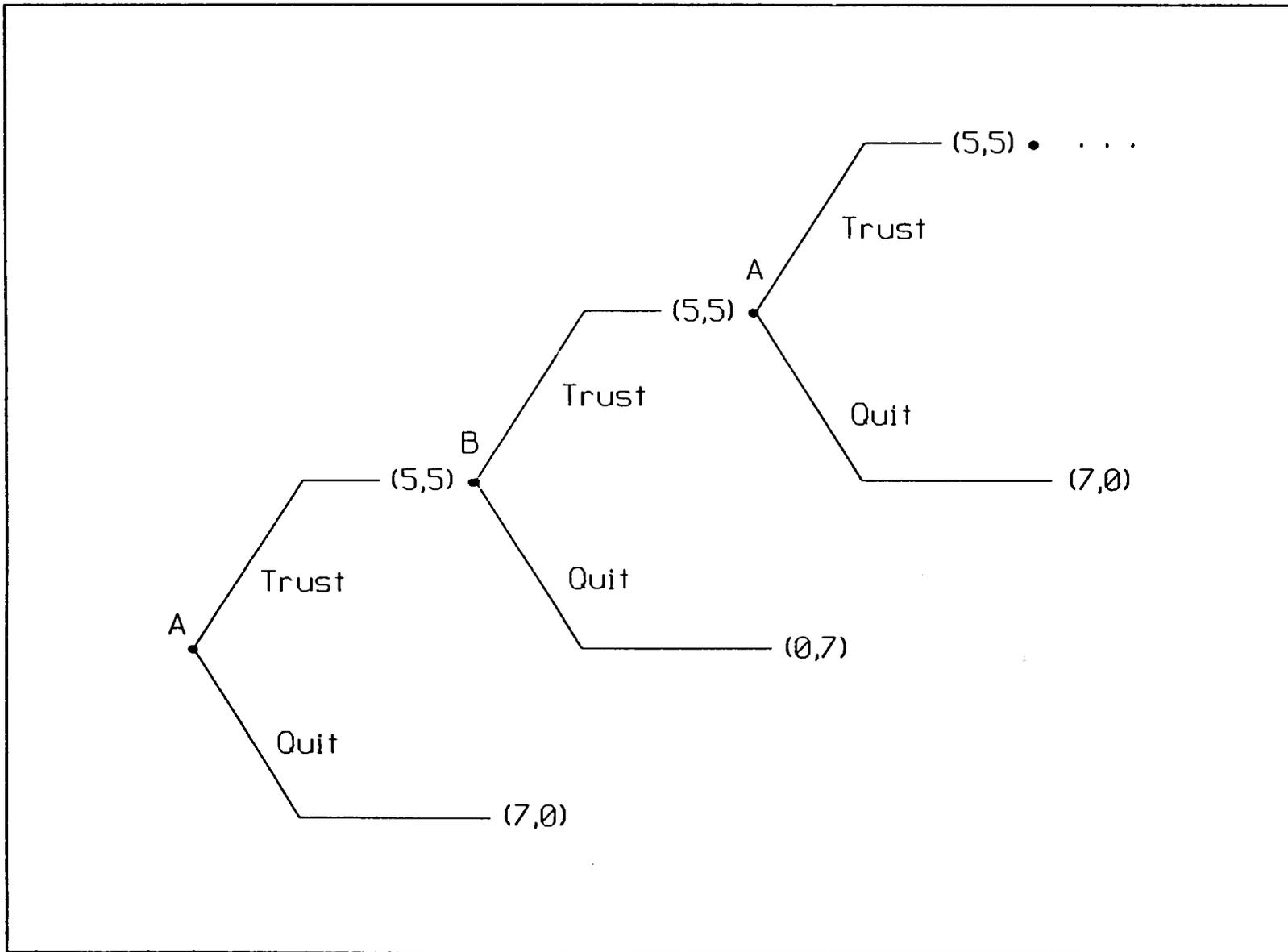
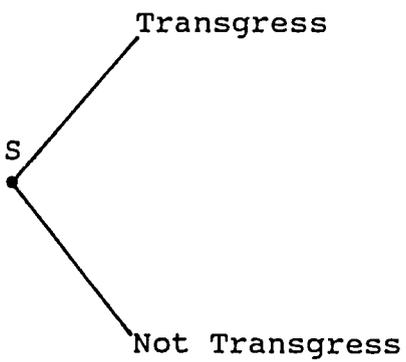


Figure 3: The Relationship Game.

**Table 1: Payoffs for the Sovereign-Constituency Coordination Game.**

S Moves first	Induced subgame between A&B (payoffs: S,A,B)					
	A	B				
	acq chall	acq      chall				
	acq chall	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">8, 2, 2</td> <td style="text-align: center;">8, 2, 1</td> </tr> <tr> <td style="text-align: center;">8, 1, 2</td> <td style="text-align: center;">0, 7, 7</td> </tr> </table>	8, 2, 2	8, 2, 1	8, 1, 2	0, 7, 7
8, 2, 2	8, 2, 1					
8, 1, 2	0, 7, 7					
	acq chall	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">2, 8, 8</td> <td style="text-align: center;">2, 8, 7</td> </tr> <tr> <td style="text-align: center;">2, 7, 8</td> <td style="text-align: center;">0, 7, 7</td> </tr> </table>	2, 8, 8	2, 8, 7	2, 7, 8	0, 7, 7
2, 8, 8	2, 8, 7					
2, 7, 8	0, 7, 7					

**Table 2: Payoffs for the Sovereign-Constituency Transgression Game.**

S Moves first

Induced subgame between A&B (payoffs: S,A,B)

S	Transgress against both	A	acq	8, 2, 2	B	chall	8, 2, 1
		A	chall	8, 1, 2			0, 7, 7
	Transgress against A	A	acq	4, 2, 9	B	chall	4, 2, 8
		A	chall	4, 1, 9			0, 7, 7
	Transgress against B	A	acq	4, 9, 2	B	chall	4, 9, 1
		A	chall	4, 8, 2			0, 7, 7
	Transgress against neither	A	acq	2, 8, 8	B	chall	2, 8, 7
		A	chall	2, 7, 8			0, 7, 7

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