

Self-enforcing Constitutions and Economic Prosperity¹

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Prepared for a 2008 AEA Annual Meeting Session on:

Design and Reform of Institutions in LDCs and Transition Economies

Considerable evidence indicates that prosperity increases with the rule of law. Less is known, however, about how to foster the rule of law in developing countries. Current constitutional theory conjectures that the rule of law prevails when citizens are expected to sanction any public official, or ‘ruler,’ who abuses rights. Constitutional rules that coordinate citizens’ responses to abuses thus may enhance the rule of law (Weingast 2005).² The challenge that such constitutional reforms present is that we don’t know when altering rules changes expectations (Greif 2006a).

Retrospection suggests a theory of self-enforcing constitutions (Greif 2007) that seems amenable to guide reforms. The premise of this theory is that any ruler has a limited *physical* capacity to implement policy choices (e.g., abuse) and therefore has to rely on administrators to do so. Administrators are individuals and organizations that implement military, financial, legal or other policy choices (e.g. a professional or citizens’ army, militias, tax farmers, feudal lords, self-governed provinces and cities,

¹ This paper draws on González de Lara 2005; Greif 2006b, 2007; and Jha 2007. Contact author, Avner Greif, avner@stanford.edu.

² Coordinating rules play a similar role in self-enforcing contracts (e.g., Greif 1993, 2006).

tribes, and clans). Administrators have an advantage over regular citizens in sanctioning rulers; they can defy the ruler while facing a state apparatus that has been weakened by their defiance. When administrators have the power to sanction a ruler, they might also be able to forestall choices that weaken their power. Power can be self-perpetuating.

The equilibrium distribution of administrative power determines the set of self-enforcing constitutions. Constitutional rules specifying rights and political representation are equilibrium outcome based on the credible threat of sanctions by powerful administrators rather than the citizenry. Indeed, when administrators are powerful, specifying constitutional rules defining their rights and providing them with political representation reduce conflict and foster cooperation among them and the ruler.

This paper demonstrates the relevance of the administrative-power view of constitutionalism by examining the constitutional histories of the City-state of Venice and England, the two Western polities in which constitutionalism lasted the longest. Political rights and representation were function of the distribution of administrative power. More generally, the administrative-power view better explains these states' constitutional histories than the coordination-view.

The paper concludes by noting the implications for constitutional reforms. Reforms might better focus on altering the equilibrium distribution of administrative capacity, providing incentives to the administratively powerful to check predation by each other and the central authorities, and to align administrators' interests with social welfare.

The Administrative Roots of Venice's Political Development

The City-state of Venice (henceforth, Venice) evolved from an elected monarchy, to a republic, and eventually to an oligarchy. This constitutional dynamics reflects endogenous changes in the distribution of administrative powers. In particular, the increasing coherence of the political elite gradually reduced the administrative power and rights of other groups. The resulting oligarchy implemented economic policies that reinforced its administrative power and wealth.

Venice was governed, from its inception in the ninth century, by doges elected for life by the city's free men (the *popolo*). Their Grand Assembly (*assemblea popolare*) also had the right to approve laws. This wide distribution of political rights is consistent with the assertion that political rights reflect administrative power. The Venetian lagoon was populated, after the fall of the Roman Empire, by many families with relatively similar administrative capacity. In the early ninth century, there were no feudal lords or tribes with significant administrative capacity.

Probably due to the difficulty of coordinating the numerous *popolo*, there were no formal constitutional rules limiting the doge's power. Once elected, the doge had absolute power having full authority over all constitutional, administrative, political and military matters. The factor that prevented doges from de-facto assuming dictatorial powers was not the expectation of popular retaliation, as the coordination view might suggest. Rather, doges were limited in their power by a number of clans with relatively high administrative capacity.

The role of the great clans in constraining the doges is revealed in a characteristic of doges' attempts to seize dictatorial powers. These attempts usually focused on

neutralizing the threat posed by members of the great clans, rather than subjugating the people at large. Ultimately, all these attempts failed, usually due to concerted resistance by the great clans, rather than the broader public. Rulers without an independent administrative capacity can not abuse the rights of those with such capacity.

The process through which Venice was transformed into a republican magistracy is also consistent with the conjecture that political representation is provided to those with administrative powers and it aims at reducing conflicts among the powerful. The historical records reflect that doges began relying on members of the important clans and families (known as Great) in juridical and political decision-making processes. By 1143 this arrangement was formalized through constitutional reform that created the Council of the Wise Men (*Consiglio dei Sapianti*) and specified its political rights. Members of the Council were drawn from the families of the Great, they were to act as guardian of the interests of the commune and took an active role in its administration.

It was in 1172, however, that Venice's transition to republican magistracy was completed. In the previous year, due to internal political conflict in Byzantium, Venetians present in that empire were attacked and thousands were imprisoned. The doge mishandled the situation, failed to release those who were captured, and was assassinated in Venice. The Venetian at large probably recognized the need to provide those with administrative capacity with incentive to serve the state. The Grand Assembly authorized transforming the Council of the Wise Men into a Great Council out of which a Council of Eleven was to elect Doges. Another committee, drawn from the Great Council, the Minor Council (*consiglio minore*) served as the doge's administration.

The relative power of the doges declined because the councils fostered cooperation among the Great and increased their investment in, and control over, Venice's administrative capacity. The doges gradually lost their administrative power and hence political rights. A contemporary observer noted that the doges became "not lords, not even leaders, but honored servants of the State" (Lane 1973: 181). After last attempt by a doge to assume dictatorial powers, in 1355 sword-bearing executioners would follow doges in official processions to symbolize that they too were under the law. The Great, however, still had to rely on the administrative services of the *popolo* in manning the navy and army. Hence, they organized Venice's overseas trade to benefit all Venetians (González de Lara 2007).

The control of the Great over administrative structure was also put to another use, more significant for subsequent political development. The Great created a self-enforcing administrative system that aligned the interests of the administratively powerful families and decreased the power of each. Administrative responsibility was distributed among many interlocking councils whose members, members of the Great Council, were elected for short terms and could not serve more than one consecutive term. Important officers were appointed by randomly selected nominating committees and only one family member was allowed on any such committee.

The wide distribution of political rights and benefits supported the beliefs that members of the Great Council would use force against anyone who would attempt to become a dictator or abuse his power more generally. Various councils and magistracies were given overlapping jurisdictions so that each governing board was checked by some other boards. Office holders were legally obliged to notify any observed wrongdoing to

the State Attorneys who had investigating powers and examined the conduct of every official at the end of his term.

This administrative structure and procedures implied that among the Great, the administrative capacity of one's clan was no longer important in determining his political rights, influence, and benefits. Clans gradually declined and the Great became a cohesive group, each member of which had a personal interest in the system's perpetuation. By the end of the 13th century, members of the Great Council were better able to cooperate, administer and impose their will on the *popolo*. Membership in the Council of the Great became hereditary and the Council used its administrative control over the lucrative overseas trade to enrich its members and perpetuate its control. Venice became an oligarchy.

The Administrative Roots of English Constitutionalism

The coordination view of the rule of law has been inspired by a particular interpretation of English history. This interpretation asserts that during the seventeenth century property owners sought to protect their property from abuses by the Crown. They fought the Crown and after winning, these property owners specified constitutional rules to coordinate actions against the Crown and secure their rights. The implied security of rights fostered markets and prosperity.

Administrative power, however, constrained English monarchs long before the seventeenth century and political rights and representation changed as the distribution of administrative power evolved (Greif 2006b). Moreover, the weakening of the English

Crown and a better alignment of Parliamentarians' interests after the Glorious Revolution facilitated the expropriation of non-elite's in England and its colonies.

As early as the Norman Conquest (1066), nobles provided the Crown with military, financial and judicial services, had considerable administrative power, and were represented in the Great Council. The conflicts among the nobles and the Crown led to an increase in the number, size, and administrative power of towns. Consistent with our conjecture, the towns gained political representation and rights. In 1295, Edward I summoned the so called 'model' Parliament that was the first to include the towns. Edward recognized the Parliament's right to approve taxes. Administrative power implied rights.

Over subsequent centuries, the Parliament's grants of taxation were often accompanied by a list of grievances that sought either to change policy or gain rights. The Crown's concessions over rights suggest that the Parliamentarians' administrative power was growing. By the seventeenth century, the Crown was unable to either systematically abuse rights or raise taxes, and had to resort to such desperate measures as selling titles and assets. There was a growing difference between the ability of the King-in-Parliament—the cooperative decision of ruler and administrators—to make laws and rights formally available to the King alone.

The political conflict in seventeenth century England was one among the many episodes during which constitutional rights were altered to reflect changes in the balance of administrative powers. Despite significant limits on Crown's ability to abuse domestic rights, the expansion of Atlantic trade were making the Crown's remaining ``sovereignty rights'' over overseas customs and foreign policy more valuable. Facing constraints in

raising speculative capital and administering its own overseas ventures, the Crown allowed the chartering of self-governing joint stock corporations. The control of charters and growing revenue from overseas customs allowed early Stuart monarchs to increasingly live without Parliamentary taxes and oversight.

A coalition of members of Parliament emerged that pushed for constitutional reforms.). In the subsequent conflict, the English monarchs lost their traditional rights over customs and overseas policy. Ironically, the creation of this coalition appears to have been facilitated by the introduction of the new joint stock corporations that allowed a broad group of non-merchants to profit from overseas opportunities (Jha, 2007).

The interpretation of the seventeen century conflict as one aligning rights with administrative power is more consistent with the evidence than the coordination view. The latter considers the conflict as being about protecting domestic property rights and as necessary for growth. Yet, property owners were no more likely to oppose the Crown during the Civil War and growth began in the sixteen century. Furthermore, domestic expropriation risk, as indicated by interest rates and land prices, were relatively small prior, during, and after the seventeen century. Finally, following the Glorious Revolution, England witnessed some of the greatest property rights abuses in its history. (See Greif 2006b for references.)

The administrative-power view is consistent with these observations. Growth in the sixteen century was possible because domestic property was already secured by administrative power. The English Civil War did not impact land prices or interest rates because a royal victory was not expected to undermine the administrative power of the property owners. Finally, property rights were abused in England after the Revolution

because the Parliament represented those with administrative power. Others' rights were not protected. Ironically, the rise of the Parliament relative to the Crown enabled better coordination and the mobilization of resources to abuse those rights (Greif 2006b).

Concluding Comments

The experiences of Venice and England suggest that the equilibrium distribution of administrative power were historically important in determining distributions of political rights. Administrative power determined what rights and whose rights were an equilibrium outcome and who gained political representation. Intentional and unintentional changes in administration's structures, procedures and financial instruments (in the form of shares in joint-stock companies) influenced the composition and interests of those with administrative capacity. Administrative power played a similar role in the emergence of constitutionalism in other pre-modern states (Greif 2006b, 2007).

An important question yet to be explored is whether administrative power also influences constitutionalism in contemporary countries. While important work has examined the role of civil society – of administrative capacity outside the state apparatus – in supporting the rule of law, surprisingly little attention has been given to the possible influence of the state's administrators. Casual observation suggests, however, that administration matters. Differences in administrative power, its distribution, and the equilibrium that prevails in the implied game may be the factor determining whether the separation of powers and federalism lead to the rule of law.

In the US, for example, the wide distribution of administrative capacity restricts abuses. Military, financial and other administrative services are provided by many

independent bodies such as the states, school districts, local law enforcement agencies, business associations, and business corporations (that provide tax collection services). This administrative structure reduces the expected gain of one unit from implementing illegal choices because other units can be mobilized against the transgressor.

Moreover, the federal government's capacity to abuse right is limited by its dependence on the cooperation of many units with administrative power. An American president refusing to vacate his office or a general attempting to cease power would face a high cost of implementing choices. As in pre-modern Venice, it would be highly difficult for such a usurper to convince sufficiently many administrators that they would be better off cooperating with him given the common beliefs that others would not.

Spain's democratic transition in 1975 exemplifies how administrative incapacity by aspiring dictators protects democracy. At the end of Spain's dictatorship, the reformers recognized that a conscript army would be more likely to protect democratic institutions, as it would be dominated by those who had not benefited from the dictatorship. Indeed, during the last Fascist coup attempt in 1981, soldiers refused to support their rebellious officer.

More generally, altering control over administrative capacities is a hallmark of contemporary changes in constitutionalism. Aspiring autocratic regimes, such as those of Vladimir Putin and Hugo Chavez, nationalize mineral wealth, gain control over its distribution, and try to use these resources to further gain administrative power. On the other hand, transitions away from authoritarian regimes (e.g., in Latin America) transpired alongside administrative reforms aimed at reducing the central control over administrative capacity.

Models of administrative power indicating which and when administrative reforms promote economic prosperity are yet to be developed. If history is any guide, the economic implications of various distributions of administrative power depend on the economic structure and the implications of prosperity on administrative power. In Venice and England, commercial expansion was feasible and rewarding to the administratively powerful. It was also socially beneficial for a long period and gains were widely distributed, perhaps because of the labor intensive nature of their overseas ventures. But the rule of law did not lead to prosperity in the Commonwealth of Poland-Lithuania (1569-1795) which was also a constitutional monarchy. The aristocracy, whose administrative power and wealth were based on agro-export, enacted legislation leading to serfdom and limiting urban growth (Greif 2006b, 2007).

Similarly, we don't have a theory specifying the conditions under which those with administrative power would allow the rise of new groups with administrative capacity or expand constitutional rights to others. In England, new groups emerged and rights were expanded. This did not transpire in Venice. Surprisingly, the Commonwealth of Poland-Lithuania adopted a constitution similar to that of the US in 1791.

In any case, history indicates that the origin of constitutionalism lies not in the citizens' abilities to coordinate resistance to an abusive ruler. Rather, it appears to lie in the changing incentives to cooperate among individuals and groups with administrative power. The equilibrium distribution of administrative power determines the distribution of rights, influences policy choices, and impacts economic outcomes.

It would therefore be useful to consider fostering constitutionalism by influencing the equilibrium distribution of administrative power. Such constitutional reforms should

aim at redistributing administrative capacity and responsibilities so that the administrators are powerful vis-à-vis the central authorities while their interests are aligned with the citizens'. Admittedly, this is easier said than done, but history indicates it is both feasible and rewarding. Administrative reforms aimed at fostering constitutionalism are a neglected but important channel to advance economic prosperity.

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