

# Will the World ever be Governed? The Dynamics of Global Constitutionalization

Eric Brousseau, EconomiX, Université de Paris X & IUF;

Yves Schemeil, PACTE, IEP Grenoble & IUF ;

Jérôme Sgard, CERI/Sciences-Po, et Université Paris Dauphine;

Coppet, January 2006-Paris, July 2007-Lyon, Sept 2007, Geneva, March 2007; Grenoble, July 2007; Nanterre, October 2007, March and May 2008

This version: 13/06/2008

## Abstract

Just as non-state actors surrendered to national sovereigns in the past, dissatisfied citizens or national elites may in the future replace incumbent states by an alternate, global public order. And as states will be bypassed or merged into a more integrated and egalitarian constitutional order, sovereignty will be transferred. In order to formalize this hypothesis we rely on an agent-based approach. We assume that in order to manage their coordination needs, individuals may find beneficial to delegate the right to establish and enforce rules to ad hoc entities. Section 2 of this article presents an analytical model of regulatory delegation, out of which we differentiate between weak (or private) and strong (or public) delegation. We then oppose rule-makers, or insiders, or dominant players, who can impose their rules, to peripheral entities who have insufficient incentives to settle on an alternate order. This opposition then helps formalizing the emergence of a constitutionalized liberal order, where equality of rights balances asymmetries between citizens. Section 3 mobilizes this model in an account of how political orders and market integration have interacted over the course of history. Specifically we identify three constitutional phases within the modern Westphalian era. Section 4 builds on both the analytical model and the historical account in order, first, to analyze the present day, international “non-order”; characterized by the confusion between private and public entities, failing to implement a binding hierarchy of norms. We then derive four evolutionary scenarii of constitutionalization corresponding to contrasted degree of institutional integration and of equality of rights between individuals, (depending upon whether their rights are defined by a local or a global Bill of Right). We then discuss the drivers and inhibitors of the development of these alternative scenarii. We formalize the political dynamic leading to a possible, future global constitution as a conflict between “progressive” actors and conservative ones who derive substantial private benefits from national state machineries. Obviously, the balance between progressive and conservative actors, or motives, is not constant over time. It can evolve along contrasted paths which conditions are analyzed here.

# 1. Introduction

Global warming, global trade, global financial stability, global diseases and pandemic: an increasing number of issues call for the development of global regulations that should surpass the current processes of intergovernmental cooperation due to the weaknesses of these process of interaction among national states. On the other hand, national states remain the beneficiary of constitutional delegations by the citizens, which provide them with the legitimacy to design and implement regulations, and governing elites are reluctant to renounce to their prerogatives. National states seems therefore to remain the end of history, since realism leads to not identify any force that could lead them to transfer their ultimate veto rights, or be deprived of it.

We point out, however, that obstacles on the road to constitutionalization at global level may be bypassed in the long run as easily as the barriers to the constitutionalization of national states were turn down in the past, due to the progressive waiving of guilds, cities, and local prince's prerogatives. Although it seems more realistic (and closer to realism and neo-realism in IR) to consider that states *cannot* transfer their ultimate power to any other institution under any circumstance, we would like to explore the opposite statement. Could national states disappear in the long run and be replaced by international institutions, exactly as non state actors surrendered to national sovereigns in the past?

To explore the idea that national states are not the end of history, that sovereignty might be transferred, and that a more integrated and egalitarian constitutional order could emerge at the global level, we rely on an agent-based approach. We assume that in order to manage their coordination needs, individuals may find beneficial to delegate the right to establish and enforce rules to ad hoc governing entities. We highlight however that agents contrast two types of delegation: weak and strong. Weak delegation consist in granting a limited and targeted authority to a ruler to solve a specific set of coordination problems, for instance related to trade or to the production of local or sectoral public goods. Strong delegation corresponds to an extended delegation of power aimed at providing the ruler with an ability to establish the fundamental rights of individuals as well as the basic rules of social exchange in a given society. The dynamics of fundamental rights is thus tightly linked to the risks that, once endowed with considerable regulatory powers, rulers may trample on the civic and private rights of agents.

Once established, a given constitutional order thus bears heavily on individuals' capacity to

valorize their resources (physical capital assets, human capital, etc. which relate to market integration and increased division of labor) and to self-organize at the community level. In other words a constitution establishes a degree of social autonomy and the ability to manage collective and individual action, hence the perspective for economic entrepreneurship and civic initiative. It sets up therefore the potential for wealth, economic growth, individual freedom and citizenship.

Starting from this, we show that there is an intrinsic dynamic of constitutionalization processes by which citizens that might be granted with unequal fundamental rights at a given historical step call for an extension and for an equalization of their rights, leading to the emergence of liberal orders characterized by a strong equality in rights and therefore an open competition among the citizens. Indeed more liberal constitutions promote economic development and political freedom and participation.

This movement is initially bounded within “national” boundaries. However, with technico-economic development the relevant arena both for trade and for the exercise of active citizenship bypass these traditional boundaries. There is therefore a strong “call” for adjusting the existing constitutional arrangements to evolving demand by traders and citizens. Thus the autonomy granted to agents by national constitutions is a major cause of their being later displaced by a larger political order.

On the other hand, there are strong inhibitors to this movement of global constitutionalization. Indeed, constitutionalization processes rely on compromises between groups of interests who recognize mutual rights. In particular, some groups are able to control the ruling capabilities of constitutionalized state and are able to distort the social order in their favor. These groups have therefore vested interest in existing national states and are reluctant to waive their ruling capabilities to any supranational entities.

The process of global constitutionalization is therefore dependent upon a conflict between specific groups of citizens — either traders or political activists — seeking for a more economic and politic integration at the global level, and incumbents, national political elites and their allies (i.e. those who benefit from various types of rents).

The mechanics of re-ordering is thus framed as a problem of individual and collective action, without giving specific weight to exogenous variable, such as technology and environment for instance (see Buzzan and Little). Neither do we defend a “decisionist” view of history, where outstanding individual make the right choice, or design the right constitutional proposition at

the right moment. Contrary to neo-realist or liberal researchers, we seriously consider the role of agents; but in contrast with many historians and political philosophers we do not put a premium on leadership and personal skills. Critically, we also diverge from the “the rational design of international institutions” paradigm (Koremenos, Lipson, Snidal, 2001), first of all because it does not address the problem we want to solve: how may existing polities be merged into larger ones without any particular human action to accelerate the trend? Moreover, we do not equate the *design* of new institutions with a full-fledged *constitutionalization* process. Whereas designing is a matter of individual choice, constitutional change, as we see it, is collective: it is the outcome of a multitude of small acts, made in a myriad of differentiated local and time-bound contexts. Aggregation is thus probabilistic and its outcome, in historical perspective, indeterminate. Hence, we do not defend that a World constitution *will* be written, but that individual and collective action may deliver such outcome – and we indeed envisage four such scenarios, leading to alternate models of global order.

How original this agent-based and interactionist theory of constitutionalization is compared to existing explanations of global institutional change? Part of the answer is in the absence of convincing theoretical accounts of, first, the process of cooperation between state, non state, and interstate entities; second, the movement towards an increasing delegation of power from local to global entities. To go beyond current research we need to tell why, how and when sovereignty transfers may become possible. To start with, few authors ever ventured into this field, especially during the last period. One may think i.a. to analysts of “the end of hegemony” and the resulting phase of cooperation without a dominant great power (Keohane, 1984); or to research on “constitutionalization” linked to reformed world institutions and values (Reus-Smit, 1997); as well as to the construction of a World polity (Ruggie, 1998). Later however, most scholars eventually conflated a constitutional theory of sovereignty transfers at world level with less encompassing explorations of new issues in International Studies. To name but a few of these problems, think to processes of “legalization in world politics” (Goldstein, Keohane, Kahler, Slaughter, 2000; Keohane, Moravcsik, Slaughter, 2000; Brütsch and Lehmkuhl, 2007; Börzel and Risse, 2007; Mondré and Zangl, 2004); or to the likeliness of a “world government” (Wendt, 2004), or a “world society” (Buzan, 2004); to international “norm setting” activities (Finnemore and Sikkink, 1998; Schemel and Eberwein, 2005 and 2008); “multilateralism” (Ruggie, 1992; Petiteville, 2005), and also to “contractualist” views of efficient property rights and the rule of law (North, 1990 a and b,

1991; Williamson, 1985; Brousseau and Raynaud, 2006; Brousseau, 2008). What brings together these contributions is there being focussed on a particular driver or series of drivers towards a more institutionalised world.

On the constructivist side some scholars perceive a “normative shift” or a “move to law”, and a “norm-based momentum” characterized for instance by “the increase of international law-making (...), the variation of legal regimes, and (...) the differentiation of legal and law-like arrangements that are emerging from the politics beyond states” (Brütsch and Lehmkuhl, 2007: 12, 14). Brütsch and Lehmkuhl, for instance, identify four variables of a “complex” legalization process: variation, differentiation, pluralism, and hybridisation. Others, like Zangl and Zürn (2004), even propose a model of “procedures for adjudication, enforcement and law-making” which can be taken for a “contribution to the Constitutionalization of world politics”. Since this approach is not grounded on “the rationalist assumption that legalization can be explained in terms of state preferences in the resolution of collective action problems” it does not evince the usual shortcomings of interest-based paradigms (Brütsch and Lehmkuhl, 2007: 11-12). As will soon be shown, these views based on the multiplication and the deepening of legal networks are much consonant with our own explanation. There is nonetheless a caveat in legalization models: they excessively rely on a path dependency assumption – law and courts exponentially grow beyond a point of no return – and, from there on, on a functional division of labour/specialization approach. As such, they do not make room for alternative itineraries towards different sorts of world orders, be they legal or not, contrary to what we try to do in this paper.

Alexander Wendt opts for yet another explanatory strategy, which at first glance may also look close to our goals. According to him, the main driver towards a “world government” that “would emerge whether or not anyone intends to bring it about” (Wendt, 2004: 529) is the universal endorsement of a philosophical principle of justice, the “politics of recognition” – as well as a security problem that will be discussed in the last section of this paper. Because “desires for recognition (...) in the long run (...) undermine systems that do not satisfy them”, leading national states tend to assign collective rights to communities of victims and communities of origins within their own boundaries. A costly transnational “struggle for recognition” of global communities then seems inevitable. Eventually, recognition will be obtained in order to assuage increasingly destabilizing demands, which will in turn lead to a transfer of sovereignty: the capacity to assign legitimate community rights would have to be pooled if only to avoid inconsistency. Therefore, communitarian identities and state identities

could only be defined at world level by a single government.

In the same vein, less ambitious theories of learning and socialization start from the close premises: groupthink and reliance on precedents (Rosati, 2000) may encourage politically correct measures; adoption of collective norms by international organizations' new members may save a costly use of blunt conditionality (Checkel, 2001; Finnemore, 1993; Kelley, 2004); the spiralling of norms and norm cascades as well as norm consonance (Finnemore and Sikkink, 1998; Keck and Sikkink, 1998) may eventually be conducive to the setting of "rules for the world" (Barnett and Finnemore, 2004). The acknowledgment of superior norms by potential transgressors of world order may eventually outdate the need for asymmetric power: every new stakeholder more or less quickly learns the rules of the global game, as well as the cultural norms that will help it establish itself as a legitimate partner for every other members of the same club. Therefore, principle, norms, and rules are progressively reinforcing, and state actors adopt them with diminishing resistance. This is certainly in line with our own framework, although such analysis relies excessively on subjective factors like self-assessments and self-esteem that we try to exclude from an objective theory of global Constitutionalization.

Outside constructivism, neo-institutional, liberal, and rationalist theories address the issue of global institutionalization through cooperation mechanisms. To this end, they simply extend to interstate relations results derived from the analysis of coordination between negotiating states. Having to explain why sovereign rulers may tie their hands when signing international agreements, and why states become members of collective alliances and international organizations whose decisions may be detrimental to the national interest, Robert Keohane went as far as considering institutions as "independent" variables (Keohane and Martin, 1995). He later put the stress on the balance between transaction costs and expected benefits. States tend to invest IOs because they are the appropriate forums where to make claims public, to show determination or benign neglect on particular issues, to formulate policy proposals, and even to provide "focal points" for game players. This is typically the case if the "games" played are iterative: this condition being met, future profits will offset present investments costs (Keohane, 1998, 2006; Haftendorn and Keohane, 1999). Eberwein and Schemeil (2005) and Schemeil (2008a) extend this analysis to interorganizational cooperation. Plagued by periodical threats to be shut down, sidelined, or merged with other institutions, IGOs unendingly tend to enlarge their initial mandate. However, in this race for recognition they also compete for the same limited amount of resources (as do NGOs, see Cooley and

Ron, 2002). They even create organizational slack and redundancy. These factors being aggregated, IGOs may put out of business some official institutions specialized in the same fields (as did the WTO with UNCTAD, and ICCANN with ITU, see Schemeil, 2008b). Since it is difficult to foresee the exact balance between positive intertwining and cobwebbed relationships, on one side, and negative overlapping moves, on the other side, such an institutional shift will not automatically end up as a Constitutional turn: part of the explanation of global Constitutionalization is missing.

It is therefore clear that theories of legalization, recognition, and cooperation are necessary albeit insufficient in order to provide a proper account of the dynamics of constitutionalization. First, they must be combined instead of being used separately if one wants to get full benefit from their real achievements; second, even when a full-fledged explanation of institutionalization trends is reached, we still need an additional theory of delegation. Contrary to explanations that either rely on automatic processes, or combine rationalistic motivations with systemic constraints, we frame the mechanics of world re-ordering as a problem of individual and collective action, hence as a process of aggregation and delegation. We indeed defend that this allows us to address legitimately the various patterns among which other theories choose a dominant or exogenous variable – path dependency, rational choice, leadership, or cobwebbed effects.

At this stage of modelization we do not give specific weight to exogenous variables, such as technology and the environment identified by Buzzan and Little as the engines of global history (Buzan and Little, 2000). Neither do we adopt a “decisionist” view of history, where outstanding individual make the right choice, or design at will the right constitutional proposition at the right moment. Contrary to neo-realist and liberal researchers, we seriously consider the role of agents; but in contrast with many historians and political philosophers we do not put a premium on leadership and personal skills. Critically, we also diverge from rational choice studies, noteworthy “the rational design of international institutions” paradigm (Koremenos, Lipson, Snidal, 2001). First of all RC does not address the problem we want to solve: how may existing polities be merged into larger ones without any particular human action to accelerate the trend? Moreover, we do not equate the *design* of new international institutions with a full-fledged *constitutionalization* process: designing is a matter of individual choice, constitutional change is the collective outcome of a multitude of small acts, made in a myriad of differentiated local and time-bound contexts. Aggregation is thus probabilistic and its final state, in historical perspective, indeterminate. Again, we do not

claim that a World constitution *will* be written, but that individual and collective action may reach a point where such an outcome would become possible – and we indeed envisage four such scenarios, leading to alternate models of global order.

Though our analytical model is derived from the study of domestic experiences in constitutionalization we do not consider the national and international spheres as homothetic, as Ferguson and Mansbach do. We share with these two authors an insistence on the parallelism between changes in politics and changes in their regional environment, but in our understanding global constitutionalization will differ from national processes: the heavy institutional structure of existing states will make the re-allocation of regulatory powers between national and international entities a much protracted and open-ended process than simply posited by a functional equivalence between them. So far, the asymmetry between states and interstate entities is still obvious: most states receive considerable loyalty, they aggregate the production of a great number of public goods, and they play a key role in building the collective interest.

Our analysis also departs from current economic approaches. Typically, neo-classical and public choice theory generate political institutions out of purely interested behavior, though this require rather aggressive hypothesis which may strain the historical record. Because modern liberal orders have been established historically upon a constitutionalized division between public and private spheres, or between the collective interest and individual enterprise, this defining opposition should be put on the frontline: there is a need to account for its emergence, its institutionalization and its capacity to shape actual social exchange. As already suggested, this opposition is also present in the motives beyond political mobilization, that may eventually deliver constitutional change. In the 1776 United States, in 1789 France, or in 1981 Poland, citizens certainly had private interests and did not forget them; but these interests were not their driving motives when they tried to constitutionalize the governing rules of a new polity that would be defined by a commonality of condition, needs and prospects — which is exactly what contemporary globalization is about. However, designing superior rules according to which contracts will be negotiated is different from actually negotiating these contracts (future commercial or weak delegation contracts). This dualism of motivation that may seem inconsistent in some scholars' views is instrumental in our agent-driven differentiation between scenarios of global constitutionalization. Depending upon whether citizens or merchants will be the more influential in the would-be global delegation contract, the final institutional framework that will emerge at world level may vary hugely.



In the remaining part of this paper, we present an analytical model of a regulatory delegation of power, out of which we differentiate between weak (or private) and strong (or public) delegation. We then oppose rule-makers (or insiders, or dominant players), who can impose their rules, to peripheral actors who have insufficient incentives to set up an alternate order. This distinction helps formalizing the emergence of a constitutionalized liberal order, where equality of rights balances asymmetries between citizens (section 2). In section 3, we mobilize this model to give an account of the process through which political orders and market integration have interacted over the course of history. Specifically, we identify three constitutional texts within the modern, Westphalian era: the initial ‘Hobbesian’ pact traded personal security against allegiance and taxation; then the ‘Bill of Right’ amendments succeeded in constitutionalizing citizens’ rights against the Leviathan; lately, from the late 19<sup>th</sup> century on, the regulatory or policy-making State supplies an ever larger array of public goods and services to its citizens, but also to foreigners (through immigration and intervention). Section 4 builds on both the analytical model and the historical account. We first analyze the current international “non-order” that we interpret as being a “cluster” model characterized by the confusion between private and public entities since it is not built on a binding hierarchy of norms. We then derive four evolutionary scenarios of constitutionalization: a rationalized cluster, a hegemonic order, a confederation and a world federation. These outcomes are differentiated by the degree of institutional integration and equality between individuals, depending upon whether they derive from a domestic or a global Bill of Rights.

## **2. An analytical model: Towards a better understanding of Constitutionalization and the provision of collective order**

### **2.1. Delegation at the roots of Order-Providing Entities**

To try to better understand, the economics and politics of global governance, we propose an analytical framework aimed at, first, clarifying concepts within and across disciplines, second, establishing analytical categories that allow, in particular, to contrast the very nature of the orders provided by all kind of entities interacting in the provision of components of the global order and to deduce the properties of alternative combination among these entities. This framework is based on an individual centric approach. We contrast various models in function of the nature of the delegation granted by individuals/economic agents to entities providing order. It must be clear, however, that this is a pure analytical perspective. We do not claim

that from an historic point of view, these entities draw from the delegation by human beings constituted as free individuals from the beginning of human history. We will be back to that in section 3.

To establish our analytical categories, we start from individuals recognizing their collective coordination needs and who therefore decide to delegate rights to establish collective order to entities. These entities can be individuals — as a sovereign — or groups; the later being spontaneously established (i.e. a community) or formally settled (i.e. an organization). What matters is that individual agents grant this entity with rights to establish an order. An order results from the settlement of rules — i.e. rights to take actions and to access or use resources — and from the exercise of enforcement to guarantee compliance. In an economic perspective, both activities consume resources and a cost-benefit analysis can be applied to alternative way to produce an order (Barzel, 1989; North, 1990; Williamson 1996). More precisely, collective rules and their enforcement result in benefits (for example, reduced costs of interactions among individuals, or ability to provide collective goods). On the other hand, resources have to be dedicated to the design of rules and to their enforcement (e.g. costs of a legislative system or from the judiciary). Individuals consider various tradeoffs between benefits and costs when choosing to delegate the provision of order to alternative entities in various domains.

Delegation can be explicit or implicit. It is out of the purpose of this paper to discuss the various ways individual actually delegate the provision of collective order to alternative entities. We acknowledge that in actual facts individual were born in established orders. They then decide to opt-out or not. They can also adhere to other complementary or substitute orders. And finally they can be at the origin of new orders. Moreover, these orders can be formal or informal. A formal order is based on an identified principal to whom authority is (explicitly or implicitly) delegated. An informal order draws from the convergence of anticipations of individuals (Aoki, 2001; Dixit, 2004). In this paper, we focus on formal orders. However, even when it is question of informal order, delegation (to the “community” characterized by its beliefs, values, customs, etc) occurs in the sense that individuals might always opt out. If they do not, they adhere and accept therefore to waive their individual sovereignty in certain domain to benefit from collective services.

The logic of delegation of authority to an entity by an individual is of a cost vs. benefit nature. On the one hand there are costs linked to the fact that individuals waive part of their sovereignty. By agreeing on limiting ex-post their freedom of action, they might loose

opportunities to adopt first-best behaviors in some circumstances. They might also be forced to contribute to the production of collective services. Lastly, there is a risk of capture of rents by the order provider. These costs and relational hazards are considered in function of the benefits. Fundamentally an individual benefits of collective services that are either less costly than if he had to produce them alone (or by contracting on a pure inter-individual basis with the other agents), or that would simply not be provided because “externalities” will prevent their production at the “efficient” level<sup>1</sup>..

Choices in matter of governance consist in selecting various classes of coordination or collective action problems and to decide how they should be addressed. One element of choice is certainly the size of the community that complies with a common order and this leads to the choice of a more local vs. global level of provision of an order. We will extensively discuss this issue in the last sections of this paper. Another element of choice is the type of delegation. We think useful to contrast two types of delegations that are the extrema of a continuum from weak to strong delegation. This continuum goes with the extension of the number of domains on which a right to regulate is delegated to the order provider and with the extension of his authority (i.e. the extent to which he can impose constraints to the individuals). “Strong” delegation means therefore extended authority provided to an entity on a wide set of domains. “Weak” delegation means bounded authority on a limited set of domains. The idea of strong delegation goes with the idea to strongly tight rights to design rules and rights to use all sort of means, including violence, to ensure enforcement. Weak delegation goes with the idea to strongly bound regulation and enforcement capability; which both rely on restrictions of rights on both issues and on the separations of them. This opens the door to a contrast between what is usually called public (or governmental) ruling capability and what is usually qualified as private (or self) regulation.

We explain below why contrasted types of delegations result in contrasted ability and “legitimacy” of various types of authorities in establishing a collective order (section 2.2). The choice between a “strong” and a “weak” delegation results in a trade-off between costs

---

<sup>1</sup> Externalities occur when an individual does not take into consideration the impact of its individual decisions on utility of other agents. It draws from technical/natural interdependence and from social arrangements (that establishes or not means to “internalize” externalities. When externalities are not taken into consideration, there is a sub-provision of the considered good or service since those who decide to produce do not consider the benefits drawn by others. Also the good can be over-consumed, meaning that those who can consume it do not consider alternative use of the good that could result in higher social benefits. What is usually called “public good” — a good that consumption is not rival and from which it is impossible to exclude any stakeholder— correspond to an extreme form of externality. Free access to these goods allows consumers to benefit from it without considering its costs of production, which deter potential provider to produce this good.

(in terms of sovereignty) and benefits (in terms of strength of rights). “Strong” delegations are granted because individuals want to benefit from well established rights when it comes to issues they consider as more essential than others (from rights to live, to rights to clean air, and including rights to being literate, to benefit from economic security, in the western socio-democrat societies of this beginning 21<sup>st</sup> century). However, the entities benefiting from such delegations have strong incentives to capture wealth from the stakeholders. “Strong” delegations are therefore granted in exchange of significant guarantees. What we qualify as “constitutional” guarantees provide the public regulator with a “legitimacy” to rule, and with an ability to define the “collective” interest, and to arbitrate among private interests (section 3.3). Public regulators are however granted with different levels of recognized legitimacy (and resulting authority) depending upon the type of guarantees that are provided to the individuals-principals by the constitutional delegation (section 3.4). We contrast therefore different types of constitutions and in particular despotic vs. liberal ones. The former guarantee less equality in rights among citizens than the later.

Whether it is question of weak or strong delegation, individuals might delegate authority to an entity for two reasons. First, they need resources to facilitate bilateral exchanges (in the spirit of New-Institutional Economics; Greif, Weingast, North). Second, they need to solve collective action problems in the provision of public goods (in the logic of fiscal federalism and public choice, and also in the line of the political science). These two issues are closely related since the resources that facilitate bilateral deals and trade are to a large extent public goods, whether it is a common language, a monetary system, mechanisms to guarantee security of exchanges and avoid fraud, etc. Collective regulations, whatever they are, lead to the recognition of rights that are opposable among individuals. These individual rights are the basis of human autonomy and of individual action. According to us, these rights are closely linked in two domains: economics and politics. Indeed, individuals are interested by their individual wealth, by their ability to allocate resources and to accumulate them. They are therefore motivated by the establishment of property rights systems and by infrastructure facilitating trade. In the same time, they have both an indirect and a direct interest in their ability to influence collective choices. Since part of their economic wealth is depending upon resources that are provided at collective level, they value positively the capability to influence collective decision on the matter. More generally, individuals are members of all kind of communities within which solidarities pre-exist. They value positively the capability to influence collective decision, to exercise reciprocity toward the community, to be recognized

as a member, etc. They are therefore simultaneously calling for the recognition of economic and political rights: rights to trade and rights to voice.

## **2.2. “Constitutional” vs. “Bounded” delegation and the difference between “public” and “private” rulers**

Beyond the strong/weak delegation contrast, one can point out a contrast (and a continuum) between what is at the origin of public ordering and what is at the origin of private ordering. A public order setter benefits from a strong delegation by the citizens who delegate it the task of establishing their fundamental rights. We recognize of course that this analytical vision do not correspond to the historic emergence of this delegation, as it will be highlighted in the next section. It is however relevant to consider that the notion of public ordering and its legitimacy draws from the (sometimes implicit) recognition by the citizens of such a “strong” delegation (which might also explain the self-legitimatization of rebellions and secessions when the legitimacy of the public order is no longer recognized). It is also essential to recognize that the definition of fundamental rights is subjective and that individual can decide to extend it quite widely (as discussed later on). At this point it is sufficient to point out that these “fundamental” rights are both economic and politic. They establish the degree of autonomy of citizens/economic agents and therefore their capability to trade, self-organize, and voice when collective decision-making occurs.

It is worth pointing out that in both cases of strong or weak delegation, individuals need guarantees to prevent the agent-regulator to capture their wealth, their freedom, and even their life. In the case of strong delegation, strong “constitutional” guaranties are requested under the combination of division of power à la Montesquieu<sup>2</sup> (within the organization to which authority is delegated) and of competition among the various beneficiaries of delegated authority (e.g. check and balances; federalism, etc.). Of course, these safeguards may fail to be effective and the regulation capability can be captured and be managed in the interest of a few only, which might even use their strong governance capability to expel any challenger from the competition. In case of bundled delegation, it naturally comes as a direct output of limited delegation of power in specific domain of activity (domains of competence). This results in a “fringe competition” among private regulators. Providers of private orders are submitted to a permanent challenge by their principals who constantly consider alternative

---

<sup>2</sup> Or under the form of separation between the temporal and the spiritual in many traditional societies, including Europe in the middle age

options to benefit from a collective order/service.

For an individual (who is a “principal” in the agency theory spirit), a strong delegation (to an “agent”-ruler) is more risky and costly than a weak delegation, since the agent to which authority is delegated benefits from very strong authority that can be relied on to capture rents, extort wealth and even cancel any further capability of negotiation and of exit by the principal. Therefore a strong delegation is granted only when safeguards can be implemented (unless ex-ante the principal who delegates has no capability of negotiation with the agent). These relational hazards are *de facto* controlled by the bounded aspect of a weak delegation. The regulator-agent can damage the individual-principal only marginally (since he has authority on a limited domain only) and the latter has always the option to breach the agreement since he did not really waive its freedom of choice.

The determinants of the choice of a strong vs. weak delegation to a third part are twofold. First, it depends of the needed strength — in terms of renegotiability and compliance — of the rights and rules established through this process of delegation. Any collective order results in rights (to do, to access to, to benefit from) that are opposable to others. Individuals recognize that the production of individual rights — opposable to third parts — is partly a problem of collective action because these rights have to be mutually recognized and because they have to be established against others (which make it worth to benefit from economies of scale and scope and from learning effects linked to mutualization by and delegation to a specialized entity). Recognizing rights to command — which is authority — to an entity which will benefit the same recognition by other individuals, will allow this entity to become a mutual guarantor among those who accept to subordinate to it. In addition this entity becomes an aggregator of individual coercion means, which allows constraining those who do not delegate any authority to this entity to recognize the rights of those who do delegate. A strong delegation is therefore more likely to be needed and accepted to establish and defend the rights individuals consider as the most fundamental (whatever they are).

Second, if we assume no asymmetry in terms of negotiation capability ex-ante<sup>3</sup>, granting a strong delegation is also depending upon the ability to implement safeguards in the “contract” between the individual-principal and the order provider-agent. One solution is to avoid relying

---

<sup>3</sup> Because we do not assume a (theoretical) world in which the principals have no margin of maneuver in front of the agent to which they decide to delegate some part of their freedom to decide. Indeed, this situation is of no interest from an analytical point of view since in that case of absolute power, there is no delegation possible. In the same time, it is not incompatible with our framework, since it can be considered as an extreme case of “negotiation”. Of course, we recognize that this extreme case occurs from time to time in history (and is at the origin of various forms of slavery).

on one agent only. Indeed dividing the delegation of authority among a set of agents leads to limit the authority of each of them (and therefore each agents' capability to capture) and allow implementing competition among them (which reduce the need to oversight their activity — since they mutually control each other — and provide them with incentives to perform efficiently). De-multiplying the number of agents has however a drawback. It increases transaction costs (and raises the number of bilateral relationships affected by information asymmetries). Moreover, the positive impact of this division of delegation is effective if collusion among the agents to which authority is delegated can be prevented. Thus individual will tend to accept to provide a third part with a strong authority to regulate only if they can divide authority at a low cost and prevent collusion. A good way is therefore to delegate authority to an organization in which “checks and balances” are organized among individuals whose positions should be challengeable so as to weaken their capability to endlessly capture rents and progressively void any negotiation capability of the principals. Also, the ability of principals to permanently question the delegation granted to the agent leads the later to take into account the will and the interest of the principals

Thus when “fundamental” opposable rights have to be established, individuals might accept to grant “strong” delegation to a regulator. Such a delegation is more likely to be given if a solution à la Montesquieu of division of authority can be implemented. It indeed ensures efficiency, while controlling for abuse of dominant position. Individual rights are established (and further redesigned) by a legislative system aimed at guaranteeing that the interests of the stakeholders are fairly taken into account. A judiciary is responsible for guaranteeing enforcement. The executive branch allows solving the collective action dilemma in the provision of the necessary means to have the legislative system and the judiciary actually operating, to guarantee the defenses of citizen's rights toward any third part or coalition, to provide the collective services that result from the definition of opposable rights. An important aspect of this division of power “à la Montesquieu” is that the creation of a judiciary to solve dispute among rights holders includes the resolution of conflicts between the principals (citizens) and its agents constituting the ruling entity. That is an important guarantee for the delegating principals.

When the strength of opposable rights is less an issue<sup>4</sup>, the delegation of authority can be

---

<sup>4</sup> A typical situation in which the strength of rights is less an issue is the case of “club goods”. Since, by definition, access/exclusion to/from a club good can be controlled, there is no negative externality between those who contribute and those who do not contribute. The (efficient) provision per se being in the interest of the members of the club, individuals have spontaneously interest in contributing and in complying

“bounded” according to two understanding. First only a reduced number of narrow domains of authority are delegated to the regulator. Second, only partial rights are delegated; for instance the right to settle conflict but to redesign rights. The combination of the two results in the design of a delegation scheme, which provides fewer safeguards than in the case of constitutional delegation. Safeguards come from the narrow scope of the delegation by itself. They result however in lower capability and legitimacy to implement individual rights and collective rules, since some entities can be provided with the right to design rules without checks by all the stakeholders, since conflict settlement procedures can be established without any system of appeal or strong guarantee of independence, since executive capabilities can be deprived from significant oversight and sanction capabilities, etc.

To sum-up, strong delegation, at the origin of public ordering, is associated to wide scope and high enforcement capability with strong guarantees at the origin of legitimacy. Conversely weak delegation, at the roots of private ordering, is characterized by narrow scope and by a bounded enforcement capability. The request for guarantee is therefore lower and potential competition among rulers tend to prevent capture and to incite to efficient provision of collective service. We will point out, however, in section 3.4 that different types of constitutional delegation might exist, resulting in more or less sharp contrast between private and public regulations.

### **2.3. Legitimacy of Public Regulators in the building of collective interest**

Before contrasting several types of strong delegation, we explain below why a constitutional delegation leads to the realm of alliance by which solidarity are established among individuals that have conflicting interest, while a bounded regulation embeds in the realm of contract by which individuals manage their converging interest to be provided with a common service.<sup>5</sup>

One important consequence of the idea of a constitutional delegation is that it grants the regulator with the legitimacy to “build” the collective interest. Two reasons explain this. First

---

with the common constraints.

<sup>5</sup> It is worth pointing out that the opposition between the logic of alliance (behind strong delegation processes) and the logic of contract (behind weak delegation) meets general categories traditionally recognized in social sciences as contrasted drivers of socialization. On the one hand, the logic of alliance stem from the temporarily suspension of confrontation between diverging interests to fight a common enemy. This is an exclusive process (people are *either* friends or foes) ruled by distributive rules to ensure cohesion. In such a setting, politics come first in the sense that external constraints create solidarities and allow allies to jointly build and exploit common resources. This, in turn, opens new avenues for trade and joint ventures. Such a process of building common governance resources has to be contrasted with the logic of contracting that rely on the convergence of interest among individuals that seek to optimally solve common problems. This logic is inclusive in the sense that every actor is a potential partner for every other. In such a setting, bilateral contracting can lead to the building of collective regulations, because the necessity to warrant contribution to public goods (starting by the security of inter-individual exchange) leads actors to build adequate institutions to accommodate their collaborative spirit. Historically, as it will be illustrated in section 3, these two basic processes of alliance and contract combined to result in the present division of tasks among public and private regulators



since the logic of a constitutional delegation is to establish individual “fundamental” rights, principals have incentives to jointly delegate to a common public regulator with those with which they might have conflicting claims (on these fundamental “rights”). Indeed, if there is no interaction among individuals establishing a common order is useless. To the opposite, the more conflicting claims on the more essential rights, the more an agreement on a common order is needed. Thus, a public regulator will have to reconcile conflicting interests. In addition he has to solve the collective action problem of mobilizing resources to defend the fundamental rights of its principals against any claim coming from outsiders. One of the conditions for this is to maintain the cohesion of the principals around the joint constitutional delegation. Thus the public regulator has to take into account the interest of all the stakeholders and has to guarantee to each of them a “fair” return on his strong delegation,. Otherwise, the individual will leave the coalition or will break the order (if it is too costly) to leave. The public regulator is therefore mandated to provide collective services that ensure an acceptable benefit/cost ratio to each of its principals (the citizens). Since individual preferences are non aggregative — because the loss in (subjective) utility by an individual cannot be compensated by the gain in utility of another individual —, the only solution is to have the ruler deciding the nature and the level of provision of public good. While we know there is no good solution to reveal the truthful needs of individual in matter of public goods, and no way to make decision that would fit with all the stakeholders first best, the only solution is to rely on a “benevolent dictator” (à la Arrow) which defines the collective interest under the constraint of maintaining cohesion. Second, it is important to point out that in dynamics, a logic of extension of fundamental rights takes place. Indeed, individual have endless needs and any public regulator is likely to increase the level of provision of rights and associated services to reinforce the justification of a strong delegation of authority in its favor (more on this in the next section). Both result in the recognition of a legitimacy of the public regulator in defining what the public interest is. This legitimacy draws from the fact that, when the constitutional safeguards are well designed, each “citizen” rationally admits that the individual constraints he stands are established in the “collective” interest which they are one of the beneficiary (while of course each individual citizen, in the same time, tries to lighten the burden of the constraints he has to stand).

There is no such logic in the delegation between individuals and a private regulator. Indeed, the weak delegation is really a targeted one in the sense that the regulator does not have to take care of the interest of its principals outside of the narrow purpose for which delegation is

granted. While those individuals in charge of a private authority might be keen to extend the scope of their delegation to benefit from a more favorable balance of power vis-à-vis their principals (which would become more dependent of the collective service provided by the authority), the loop that has just been described as taking place in the case of public authority, is less likely to initiate. Indeed principal ex-ante decided that they should not waive too much freedom of action and decision, because the services they get from the private regulator are not essential. If they would be seeking for more collective services they would delegate to additional authorities, rather than delegating several services to one authority<sup>6</sup>. Second, what leads individuals to meet around a common authority to which only a bounded delegation is granted is their converging interest on the matter. They do not meet because they have conflicting claims that have to be conciliated and guaranteed. They meet because on the issue about which they meet, they have converging interests. Put it another way, they are in a coordination game rather than in a prisoner's dilemma.

All this does not mean of course that the individuals behind a private institution do not have diverging interest. Of course they have. But they agree on creating a common order on issues on which they do not have diverging interest. Consequently, the entity to which the responsibility for providing an order is delegated is responsible for providing a regulation service that serves the interest of its principals in the specific devoted domain. Enlarging the scope of its contribution leads to reach domain where interests are likely to become less convergent. Thus, everything equal, a private regulator is likely to consider the interest of a reduced set of principals only and has only low possibilities to extend the scope of his intervention.

## 2.4. Despotic vs. Liberal Constitutionalization

In this section, we contrast two alternative types of constitutions that differ in function of the level of equality in fundamental rights that is guaranteed to the various adherents to an order. In what we qualify as the “despotic model”<sup>7</sup>, there is an unequal distribution of rights ex ante

---

<sup>6</sup> More precisely, they will compare the higher transaction costs of dealing with several authorities for various purpose with the cost of higher risk of capture by an authority providing several services (since costs of switching to an alternative authority increase).

<sup>7</sup> The notion of a “despotic regime” is altogether dated, rarely in use, and possibly euro-centric : starting with Montesquieu, despots have often been implicitly or explicitly oriental, non-christian, and essentially arbitrary. They would not be ruled by *any* constitution and may just be a typical orientalist fantasy. In this paper “despotic” is defined primarily as the opposite to liberal, in both the economic and political dimensions; and, as stated, “liberal” is primarily defined in terms of equality in individual rights, hence in terms of autonomy of the citizen-trader vis-à-vis the sovereign and, as a consequence, in terms of contestability of political and economic markets. We also remember the tradition of the *Despotisme éclairé*, which is not identical to the specific case of the Weberian “sultanate regime”. Others could certainly have preferred a different antonym: authoritarian, unequal, aristocratic, corporatist, status-based, or even illiberal. To our understanding, “despotic” is however better because it is more comprehensive: it includes the economic and political dimensions, it can qualify antique and contemporary experiences, Western and non-Western ones – or so we assume.

among the principals. To the opposite, a “liberal” constitution is characterized by equality in rights among all “citizens”. Beyond is the contrast between the extent of the delegation of authority conceded to the ruler and, on the other hand, the guarantees he provides to citizens as regard their fundamental rights, civic and economic. This difference then has a strong impact on the evolution of the constitutional contract and on the relationship between public and private ordering. It also impacts the openness of competition within the society; on the rule of law; and on the political regime, as explained below.

Up to this point, for the sake of clarity we contrasted quite sharply the logics of public and private orderings. And in so doing we may have suggested that our general categories were in fact euro-centric and time-bound: our language actually draws from the contractual theory of the State, which has shaped modern, liberal political philosophy following John Locke, to take but a single example. The opposition between despotic and liberal regime now helps providing a more differentiated approach to the private/public interaction, albeit one that is still grounded in the same basic, analytical language. Explicitly historical considerations will come up in the next section.

Let’s start from the analysis of the emergence of collective governance proposed by Brousseau and Raynaud (2008). They basically assume that agents are *ex ante* heterogeneous: they have different endowments, different preferences, and different localization in the networks structuring society. Hence, norm setters or institutional entrepreneurs compete when common orders are being designed and adopted, in order to coordinate agents, or support collective action: they will promote alternate solutions to the given coordination problem among the given community (supporting for instance market exchange or the production of public goods). The resulting order will therefore reflect primarily the preferences and needs of the winning party. Though all agents should expect to benefit from reduced transaction costs, the needs of core members at the center of groups designing and implementing the collective governance solutions will be better addressed than those of fringe agents. In effect, the latter will incur costs of coordination that will be superior to their first best (see section 4).

In other words, collective orders are essentially asymmetric. They are made of various “circles” which offer uneven benefits to individuals. In the case of public orders, however, large delegation contracts imply that a greater capacity of coercion is given to the rulers, hence marginal agents incur more risks. Though they may represent the vast majority of the population, they may be exposed to various forms of discrimination, as regards taxation, market access, public infrastructure, spillover growth, protection of property rights, physical

security, etc. The informal sector on the margins of the large conurbations in present-day developing countries is a good case in point.

Asymmetry of course raises a problem of constitutional design. Modern, democratic or liberal constitutions are indeed grounded on the principle of equality of rights among citizens, whatever their social, geographical, professional, ethnic or religious origin. The Founding Writers of modern constitutions explicitly assumed that public institutions at least should not contribute to the many asymmetries already present in society. Equal opportunities should be offered to all, so as to satisfy ethical concerns and to foster the unity of the nation.

We thus assume that there are two generic models of constitutional delegation: liberal and despotic. Liberal constitutions are based on a principle of equality of rights, whereas in a despotic one their unequal distribution among the principals is explicit: inequality is embedded in the structure of delegation contracts, hence in the *ex ante* cost/ benefit trade-offs of the respective social classes, casts or status-groups. Some principals have more rights than fringe members and their rights are stronger than those of sidelined citizens who benefit from less constitutional guarantees. Such a constitutional contrast has major consequences, especially as regards patterns of a dynamic equilibrium.

First, equal rights under a Liberal constitution imply that the political market is more open, hence contestable. This plurality of social or private interests makes it essential to design collective decision mechanisms, whether they address the definition of rights, the design of market infrastructures or more generally the provision of public goods. Because unanimity is beyond reach due to negotiation costs and delays, the association of majority rule to freedom of expression is central. As they accommodate new rights rulers then take into account a larger spectrum of interests and demands ; alternatively, new public goods are more equally shared, a situation which favors the formation of majority coalition supporting the extension of individual rights, if not consensus<sup>8</sup>. Hence the dynamic pattern embedded in this constitution: the scope of the common interest may being steadily extended, over prolonged period of time, typically from the security of persons and property rights to, say, rights to have an health insurance coverage, old-age support, basic or extended education, counter-cyclical macroeconomic policy, etc. Hence the possibility of a long-term dynamic of political development: as the demands from a larger share of the population are better addressed, and

---

<sup>8</sup> The only limit to the extension of fundamental rights is the cost of producing them — or more precisely the costs of the mechanisms that turn them in actual rights — that can be superior to the willingness to contribute of part of the population.

as the benefits of scale, scope and specialization are better exploited on the supply side, the state benefits from increasing legitimacy and fiscal resources. Think to the New Deal era in the United States, or to post-World War II Western Europe. In turn, governing elites increase their ability to capture rents as, more generally, the private benefits of being the recipients of high-powered delegations.

Conversely, in a despotic world, the contract between the rulers and the principals is narrower, and much less dynamic. Endogenous change, whether political or economic, will be much slower. Because a large part of the population does not benefit of rights and because access to voice is bounded, the common interest is much narrower: it is typically limited to security for all, plus a limited package of services for the happy few, such as round-the-year entertainment in royal palaces like Versailles. As the supply of public goods and services is narrower, the “legitimacy loop” observed in the previous case does not work, and the pool of resources upon which the State can draw is also much smaller.

This underlines a second, indeed discriminating difference between the two constitutional models. Because fringe subjects under a Despotic government have low trust in their rulers and low guarantees against extortion, they will try to limit delegations and divide them among different suppliers of public goods. They will typically rely on local solidarities — i.e. family, lineage, ethnicity, guilds or municipal communities — to ensure their provision rather than entrusting it to a single, distant, uncontrollable, rent-seeking state. The contrast between public and private ordering is therefore blurred: most public goods will be provided by local fragmented orders that may provide both private and public goods, though with little benefits in terms of size, scope and specialization. In other words, the dynamics of political development will remain weak, though the underlying constitutional order may be quite stable. Individuals will be stuck in their traditional solidarities that may protect them against the despot; and in turn the state will be prevented by its weak legitimacy from extending beyond the “minimal”, initial contract<sup>9</sup>.

Symmetrically, in a Liberal order equality of rights within the polity, the benefits of centralization and the underlying growth dynamic in the provision of public goods are powerful forces against locally contracted orders. Equality among citizens deprives

---

<sup>9</sup> Think for instance to early modern, absolutist France where the absence of constitutional guarantees to investors made it hard and costly for the State to raised debt (North and Weingast, ...). Timur Kuran (2005) also shows how, in the traditional Middle-East, the fragility of all types of property rights against extortion left wealthy families with only one safe, financial vehicle – the religious foundation, or *Waqf*. The problem, he emphasizes, is that did allow for the emergence of dynamic, profit-oriented, early capitalist corporations, that could have supported capital accumulation, innovation and growth.

communities from the legitimacy of settling local orders beyond the provision of public goods to closed “clubs”. It de facto reduces their capacity to manage solidarity on an inter-individual and voluntary basis, since any effort to coalesce locally might be considered as an attempt to escape national solidarity, to weaken the equality among citizens and possibly to capture rents. The state therefore becomes the ultimate legitimate manager of solidarities, the architect and arbiter of their division of labor, as well as the ultimate guarantor of equality among citizens. Centralization is thus a core component in the establishment of a liberal order first and foremost because self-standing, self-enforced local orders are being steadily weakened or marginalized. At equilibrium, however, the provision of public goods in a Liberal constitution might not necessarily be more centralized than in a Despotic one. What is being thoroughly centralized under *any* Liberal constitution is the overall hierarchy of norms and laws: local orders have to be confirmed by superior ones, conflicts of jurisdictions are adjudicated from above and, critically, the fundamental rights of citizens are established and defended at the highest level of political organization – say, the national constitution and the Supreme Court. Private conflicts are then submitted for arbitration to the state and *social norms* enunciated by *private actors* are changed into *bounding rules* enforced by *public institutions*. This is why the centrality of law — the rule of law — is characteristic of Liberal constitutions: interactions between more autonomous agents as well as between public bodies are increasingly governed by legal or rule-based principles - contracts and private law in the former case, administrative/constitutional law in the latter. Conversely, a (traditional) Despotic constitution would rather confirm and preserve a plurality of norms and laws, especially those proper to, say, trade, religion, family, land, etc., or to specific sub-groups (the nobility, the inhabitants of free cities, the clergy, religious minorities, etc.). The hierarchy of norms and jurisdictions is thus fragile and partial, a pattern that reflects both a low level of political integration, limited competition between individual and collective agents, and low constestability of economic and political markets. Agents are typically born into a local, public order that severely constraints their capacity to change position within the broader society: social mobility is limited and entrepreneurial projects are repressed.

Despotic and Liberal constitutions thus present much contrasted potentials as regard economic activity and growth. Under a Despotic constitution, inherited inequalities and a fragmented legal order oppose strong resistance to the extension of competitive forces. Because inequality of status is a major obstacle to the extension of competition, open competitive markets will remain at best peripheral. Typically, long-distance trade will be governed by ad-hoc legal

rules and jurisdictions, which often present a clear extra-territorial pattern (think to the *Lex Mercatoria* and the fair courts, during the late Middle-Ages in Europe).

Conversely, a Liberal constitution offers more room for market exchange, growth, and social differentiation, because equal individual rights are a force for opening markets and challenging the existing distribution of wealth. Abstract, universal, individual rights, as opposed to communal solidarities and a fragmented legal order, thus seal the alliance between a Liberal constitution and the extension of market forces. Moreover, only a rule-based state will have the resources and legitimacy to enforce market access and fair competition, and invest in market infrastructure. The “legitimacy loop” which supports the long term dynamics of political development is thus paralleled by an “economic growth loop”: single market rules and public infrastructure that support trade nurture increasing wealth and political legitimacy. This alliance between Liberal constitutions and market economies explain why Liberal constitutions are typically fought for, written, and defended by either traders primarily interested in the extension of market forces, and by citizens of the emerging Liberal Republic, who are primarily motivated by the ethical imperatives of liberty and equality, as opposed to traditional orders and vested interests. Of course, the balance between these two driving motivations to reform will affect the exact writing of the future constitutional contract, and its dynamic over time.

### **3. The dynamics of constitutional order-building: the analytical model within its historical context**

So far, we have developed step by step a framework for analyzing constitutional orders, as opposed to private or local regulatory arrangements. Though in both cases the logic of delegation derives from the same set of actor-based hypothesis, we underlined that the two models raise starkly contrasted design issues. Critically, the threats to which principals are potentially exposed are of very different scope: exiting a private order is not supposed to be costly, contrary to public ones where this option may even be closed; hence, the risks of coercion, extortion or capture which come to the fore when political entrepreneurs compete for the design and establishment of a new constitution. We then contrasted two general models of constitution, called Despotism and Liberalism, where the *ex ante* definition of individual rights between core and fringe-members of the polity are respectively unequal and equal. This makes it possible to identify how the dynamic of rights and social autonomy present in the Liberal model may generate economic competition and political participation, hence long

term patterns of economic and political development.

We now mobilize these analytical categories in order to account, however schematically, for the long-term history of human societies, from Ancient times till present days. The intention is of course to illustrate the leverage of these categories in an empirical perspective, though this is not the main objective. As we attempt to account for the development of political and economic competition over time, our aim is also to identify the defining elements of the present experience of globalization. And from there on, we intend to finally address the question we started from: is a global constitution possible, that would better address the twin demands for more equal rights for citizens across nations, and a more efficient production function for public goods (including market infrastructures)..

### 3.1. Four Historical Eras

The joint analysis of State-building and the process of international integration, specifically economic integration, may start from a simple, two-axis analytical model drawn from Max Weber's sociology of law<sup>10</sup>.

The vertical axis measures the scope of economic relationships between a given social group and the outside world. Weber would consider this group as closed when foreigners or outsiders are not able to share the rights of insiders, or compete with them for those rights. For instance, the former may not own land, or they may not have access to domestic courts; or status-groups like attorneys, doctors, and MPs may be protected against external competition by entry-barriers. On the other hand, if a single market - e.g. the European one - has been created, or if borders are weak or non-existent, then the insiders' chances to appropriate rights or wealth may be threatened. Barbaric tribes may invade kingdoms. In other words, this is a theory of the frontiers that close off a social group from the rest of the world.

The horizontal axis then reflects the economic relationships among insiders, which again can be either closed or open. An economy that is strongly defended against outsiders (i.e. closed) may thus be domestically highly competitive (i.e. open) if it opts for capitalism in a single country; or it may prefer socialism or any regime of commons or communal property (i.e. a closed economy, domestically and externally). Equivalently, doctors once they have received their degree, or attorneys after they have entered the bar, may compete ferociously among

---

<sup>10</sup> Weber, M. (1921/1968). *Economy and Society*. Berkeley, University of California Press, edited by G. Roth and C. Wittich. See Chapter 7, especially part ii: 'Forms of creation of rights' (pp. 666-752).



themselves. Or they may not, as notaries in Civil law countries, which are not under strong competitive pressure. In other words, this is a model of domestic competition, common goods, and possibly rent-seeking that qualifies the domestic constitution of a social group.

Generally speaking, according to Weber, any shift towards more competition along one of these two axes is commensurate with more individualized and less constrained rights for agents; the farther a social grouping moves into this direction, the more property and contractual rights are “disembedded” from networks of communitarian or social solidarity, to use Karl Polanyi’s vocabulary (1944). A large spectrum of constitutions may then be differentiated depending upon the type of property rights they defines. For instance, individual households may exploit land individually and appropriate the income without having a permanent right on it, or a right to inherit. Or transferability may be possible, though only between insiders. Conversely, full individual property implies that individual rights are no longer constrained by communal or kinship solidarity and have thus an abstract, universal form; land, as almost any other asset, may now have a price and be exchanged against cash, in an open competitive market which might even be opened to foreigners.

The main point here is that when the collective entity (whether a tribe, manor or state) allows agents to enter more freely into moneyed exchange, with a wide spectrum of individual rights, they will be in a better position to calculate the costs/benefit trade-offs between alternate investment strategies. And in turn, as the benefits of exchange are better exploited, trading networks will extend, the division of labor and economies of scale will increase, and this will support income growth, technological innovation and social differentiation. Rather than a theory of growth per se, however, Weber’s aim was to build an alternative argument to the classical contractual theory of the state. Where Hobbes, Locke and the liberal tradition insist on the notion of a founding contract between ontologically free individuals, Weber defends that the collective always comes first: in all society, traditional or modern, a social constitution determines and guarantees collective and private rights and then bears on the more or less extended capacity of individuals to develop their capacities as *homo oeconomici*. Even in modern, capitalist, or Westerns societies, there is no such thing as purely, self-enforced private rights: a modern, law-based state endowed with a considerable capacity to coerce is actually needed to formalize, sanction, and defend those rights<sup>11</sup> - a point that will

---

<sup>11</sup> The Homo Oeconomicus, as formalized by the neo-classical economic theory, may thus appear as an ideal-type, which will never be actually observed, though it is not devoid of epistemic validity as it embodies the ultimate rule of rational behavior; the point is that its epistemic validity will actually be determined by the relative degree of economic openness provided by the definition and extent of private

come to the fore latter, when globalization issues will be discussed.

Lastly, this defining historical evolution of the relationship between individual rights, public ordering, markets and, eventually, economic growth is non-deterministic. It is not driven by a millennial process, or a law of history that would propel societies through times, as class-struggles drives Marxian historiography. Neither are economic institutions directly shaped by the evolving interests of market participants, as the standard Law & Economics paradigm assumes. In our own vocabulary, the dynamic adjustment of public regulatory orders to the demands for lower transaction costs and better governed common goods is not pre-determined; history is open-ended, as agents, or groups of agents, may resist political change or miss economic opportunities. History and comparative economics offer profusion of such examples, and we indeed expect that any future shift to a global constitutional order will follow this pattern.

**Figure 1: Constitutionalization in Historical Perspective**

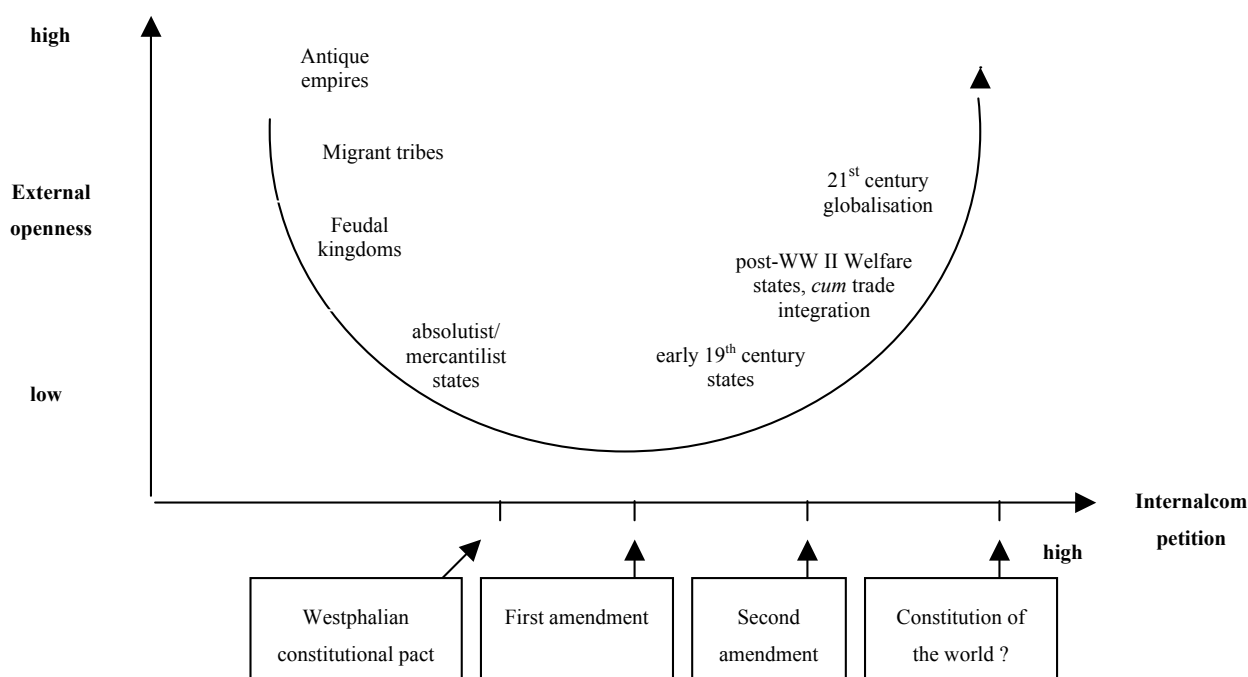


Figure 1 proposes a (very) sketchy description of how the relation between private rights and public ordering evolved over the long run. Starting with high external openness and almost no domestic competition, we argue that societies shifted to an intermediate age characterized by substantial outwards closure and increasing inward commercialization. Finally, complete globalization can be defined by high competitiveness on both counts: property and contractual

rights.

rights would be totally free and the potential of commercialization fully valorized. Let's now illustrate how this argument may be articulated, first to the analytical dynamics of delegation, which was introduced in the previous section; and second, to the perspective of a future global constitution adopted under the pressure of global economic and civic forces, that will be addressed in the next section.

An original (perhaps mythical) state of the world was possibly characterized by open land and high potential competition *between* tribes – the ultimate closed grouping. They might either fight or exchange with outsiders, but relationships *within* them remained very much adverse to internal competition, the social body beings dominated by endogamous rules and magic thinking. The early form of large-scale political orders, typically in Ancient Orient (Egypt, Mesopotamia) emerged from a segmented system of hostile relationships between patriarchal lineages that antedated state-building.<sup>12</sup> More generally, empires like Rome, Baghdad, or Byzantium were typically macro-scale political orders built up by a hegemonic kernel that imposed levies and enforced rules across the empire. The imperial order formalized a differentiated hierarchy of social status and endowed individuals with a diverse array of rights, depending upon their social distance to the center. But the political contracts that bound local communities was neither very demanding nor intrusive as regard local rules and norms. At the periphery, empires integrated a great number of local communities generally rather close to the household or *oikos* model : their institutional arrangements generally strongly integrate social, economic and religious elements, and where rather adverse to commercial or moneyed transactions, hence to economic growth and social differentiation. Wealth accumulation could actually be staggering and these political orders could also be very resilient, i.a. because they did not face hard sovereignty or representation problems. But long-term growth was clearly bounded. This is more generally the case under all types of bazaar economy, typically organized along strict professional or corporatist lines, with tightly regulated competition. This underlying organization of markets and firms is clearly adverse to technological change, increased scale and further division of labor (Geertz 1978, Timberg and Aiyar 1984).

Yet, this political structure also typically supported long-distance, inter-community trade, where its rulers saw a source of resources and wealth. Assyrians (Larsen), pre-Islamic

---

<sup>12</sup> In third millennium Egypt where matrilineal marriages put an end to civil strife, therefore upgrading communal links and making centrally administered possible, at the local then national levels. Later, in Mesopotamia as well as in the Nile Valley unification depended on a strong bid for power respectively launched from the north and from the South of these two river systems (Schemeil, 1999, 2000).

(Ibrahim, Croone, Schemeil, 1999) or early Islamic societies (Kuran 2003) did offer a number of institutions like insurance, debt contracts, inheritance rules that supported trade and encouraged commercial exchange; within the Aztec empire rulers protected commerce and expected substantial benefits from it in terms of wealth and authority since trade was also an opportunity to collect hostages among whom the future victims of bloody sacrifices at the roots of the Aztec Emperor's power were picked out (Duverger, 1979). But in each case, competition and individual economic rationalization were not tolerated within the local/communal orders - otherwise both the social and political structure of the empire might have been de-stabilized. Hence an often tight relationship between traders and rulers, though one which again was not necessarily very supportive of change and growth. This relatively recurring historical model is then located on the left end of the horizontal axis, on Graph 1, though it also showed a substantial level of external openness (vertical axis).

In Europe, the collapse of the Roman empire brought about an expected brake down of political integration and long distance trade (at least in its Western part). Alternate political orders emerged only slowly, around smaller and less powerful though more closed political orders, out of which feudal kingdoms progressively emerged. Hence a decisive downward shift on Graph 1, though without much change in terms of domestic marketization (horizontal axis). A sustained recovery in income, trade, institution-building and technological innovation then supported the cultural and urban revolution of the late 11<sup>th</sup> century, which has been much studied and documented by generations of historians (Bloch, Pirenne, Duby, de Roover, Lopez, Greiff, etc). To a large extent, this economic and political take-off was built on the re-emergence of long-distance trade, with local communities evolving on the slow lane. But a more potent re-ordering of traditional delegation contracts progressively took hold.

On the one hand, the feudal and manorial institutions slowly evolved towards more formalized bilateral commitments: for instance personal obligations towards the rulers evolved from physical to monetary transfers, and the rights of serfs and farmers became more precise – especially as regard their right on land (Berman). It has often been defended that this very much helped the diffusion of technological change. On the other hand, the wealth accumulated in the major urban centers by traders and artisans allowed them to negotiate new, indeed revolutionary delegation contracts, either with the local nobility or with the Emperor (in Italy and Germany). These contracts formalized the new status of cities and traders' communities as semi-autonomous kernels: though they were still part of the overall legal and political hierarchy and had to pledge loyalty to the ultimate enforcer, delegation allowed them

self-government institutions and, specifically a capacity to design specific norms and institutions adequate to their economic activities.

In his sociology of the City, Max Weber again underlines the historical importance of the municipal constitutions adopted in the Italian and German medieval cities. In his analysis, four institutions set these experiences aside from that of other regions or eras: the market; a conception of the city as a voluntary association that freed inhabitants from feudal knots<sup>13</sup>; the cities' "own court of law and, at least in part, autonomous law"; and "at least partial autonomy and autocephaly, which includes administrations by authorities in whose appointment the burghers could in some form participate"<sup>14</sup>. This autonomy was reflected of course in the guilds, though also in more universal, cross-sectional institutional like traders court, which were typically elected and self-managed, though they benefited from statutory enforcement guarantees; and appeal generally took the parties to ordinary civil courts. Of course, the limit of delegation could be contested, for instance when public authorities believed that market disorders might cause public troubles (like in the case of a banking crisis or personal bankruptcies)<sup>15</sup>. The point however is that this framework of constitutionalized and delegated autonomy became instrumental in supporting institutional change. Foreign, Middle-Eastern-like legal institutions could be adopted - like the exchange letter, and possibly the *commenda* contract - and new, revolutionary ones were invented: banking and monetary techniques, insurance contracts, bankruptcy proceedings, modern corporations, etc.

Here is the defining constitutional innovation: these new, private legal instruments were confirmed and enforced by the public authorities while being also protected against interference and intervention by them. Courts, for instance, would confirm limited-liability corporation, or private arrangements under a bankruptcy procedure, though without interfering into the actual content of these operations. These innovations would help agents to pool resources, coordinate productive activities and support exchange. In other words, a strong though bounded delegation of public regulatory powers to a single component of society allowed it to design a second-order constitutional rule; and, for the first time ever, this rule was based on a clear-cut and arm's length opposition between (sectional) regulatory powers which took care of the collective interest, and individual private rights that benefited

---

<sup>13</sup> "*Stadtluft macht frei*" – fleeing to the city makes you free. Weber, op cit. p. 1239.

<sup>14</sup> Weber, op. cit, chapter 16. In the Occidental medieval city, "urban landed property was always alienable without restriction, inheritable, unencumbered with feudal obligations or obligated to fixed rent payments, while peasant land was always restricted in multiple ways by rights reserved to the village, the manor, or both." (p. 1237).

<sup>15</sup> Mueller R. C. (1997), *The Venetian Money Market*, vol. 2 Banks, Panics, and the Public Debt, 1200-1500, Johns Hopkins University Press, Baltimore and London, 711 pages.

from considerable social autonomy and could thus develop strategies explicitly geared towards efficiency and profit.<sup>16</sup>

Considering the local aspect of this constitutional delegation (i.e. the trading city), a risk was that markets would be fragmented in a myriad of jurisdictions. Powerful cities may have emerged as trade kernels, and consequently imposed asymmetric rights, or maladaptation costs to fringe players. In other words, there was a risk that Europe-wide globalization could be hindered by fragmented public regulations. In fact, the demand for reduced transactions costs and legal predictability solved the problem and imposed a high degree of standardization across Europe. This de facto trans-national legal order, the *Lex Mercatoria*, typically ruled in the trading hubs like Florence, Genoa, Barcelona, Bruges or Lübeck, and also in international fairs: in Champaign at Troyes, in the Flanders at Ypres, or in England at Saint-Yves. And in all these cases, the transnational law was locally enforced and locally guaranteed by the respective ultimate enforcers – including the Kings of England or France. Remarkably, when the regulator of last resort changed, for instance when the Count of Champaign left the way to the King of France, the delegation contract was not affected; and when the political and civic rights of free cities declined, delegated regulation of markets were not affected either. This strong delegation contract was now transferable across countries and over political orders.

Absolutism and mercantilism then reflect a drive towards an extension and nationalization of these constitutional and legal innovations. Generally the “Westphalian moment” is interpreted exclusively in political terms, i.e. as marking the emergence of a constitutional delegation contract between civil societies and new “sovereign” kernels. Local hegemonic dynasties imposed their supremacy, absorbed failed monarchies and started to build modern states on the basis of law, taxation and bureaucracy. Castile, England, Prussia, or Ile de France defeated competitors such as Andalusia, Scotland, Bavaria, or Burgundy, whose nobility was either marginalized, expropriated or co-opted in the army and the royal court.

However, both Hobbes and Locke also make clear that the sovereign extends his rule over market exchange: property rights and contractual commitments were at the forefront of social pacification [quote]. The emerging national States then engineered a sharp redefinition of the old economic geography. On the one hand, long distance trade would become international

---

<sup>16</sup> Many authors claim that this breakthrough is a specifically Western European innovation. If this statement were true, it would indeed account for the divergence with other world regions, whether in the Middle-East, China or India. However, there are alternative accounts of Western exceptionalism, as in the comparison between Europe and China – since the latter was militarily unified with an iron glove, many sources of development were lost into unending battles; whereas the former remained sufficiently decentralized all along the first period of its economic development to allow constitutionalization of each political unit (Tin Bor-Hui, 2006).

trade as we know it, a set of transactions governed by agreements between states that is eventually reflected in balances of payments. On the other hand, the priority would now be increasingly put on domestic marketization and monetization: a multitude of closed, non-competitive, local economies would be slowly opened up and integrated into a single national economy; and this in turn would allow for a much broader development of market forces, economic growth and tax revenues. Trade law was a major driver in this evolution, as the new national legal orders leveraged the market-oriented, calculable rights, and private instruments of coordination developed during the preceding centuries. Rules that transmitted from Northern Italy, or that had governed specific places (the Champagne fairs, or Bruges), at specific times (two or four times a year) would now apply permanently to the whole country (namely, to all traders). Hence a decisive turn towards the right of graph 1, which reflected increased domestic competition and limited progress in terms of external competition.<sup>17</sup>

How constitutional delegation and public regulatory orders were renegotiated was again hugely influenced by local conditions: competing institutions, strength of the respective new or old actors, the pressure of traders for better market structure, their relations to political entrepreneurs, etc. In England, from the early 17th century onwards the Common law courts absorbed the old Law Merchant and thoroughly redrafted it with the vocabulary and legal principles of the old Common law.<sup>18</sup> Traders, financiers and latter manufacturers who would drive the industrial revolution also established their fundamental rights and political interests at an early hour, as they progressively entered the post-Glorious Revolution constitutional pact.

In France, regulatory reordering failed on issues of taxation and bureaucratic modernization until the Napoleonic era (Rosenthal 1998, Mousnier 1974); but the evolution of trade law was less constrained by the existing political status quo. Lyons, a major trading and financial hub during the 16<sup>th</sup> and 17<sup>th</sup> centuries, was the place where the legacy from Italy and the international fairs was first capitalized. Local market regulations and elected traders' courts were fully confirmed by the absolutist king, and this recognition provided the basis for the first ever Commercial Code – the 1673 *Ordonnance du Commerce*.<sup>19</sup> Codification clearly aimed at “formal rationalization” (in Weber's words), but it was also a force behind legal

---

<sup>17</sup> See for instance Malynes G. (1622/ 1996). *Lex Mercatoria or the Ancient Law-Merchant*. Metheling Press, Phoenix, 365 p.

<sup>18</sup> See

<sup>19</sup> See Hilaire, J. Y. (1985), *Introduction historique au droit commercial*, Paris, PUF, 1986, 355 p.

A separate case is that of special laws, governing some professions or economic activities (for instance financial ones). Ad hoc courts have certainly survived, and even developed in recent years, though their legal capacity is confirmed by sovereign.

unification within the Kingdom. Hence the ambiguity of the Ancien Régime: the monarchy did not co-opt the trading classes in the upper circles of state power and privileges, and its fiscal policies had a clearly adverse impact on investment and private wealth accumulation; but it was also keen to protect the delegated constitutional contract of traders, though with some monitoring. Hence the strong continuity with the Italian self-government institutions, centered around traders' law and traders' courts. The *Ordonnance* would then provide the main basis for the 1807 *Code de commerce*, edicted by Napoléon. The fact that it was overshadowed by the 1804 *Code Civil* is however telling: this latter text established over the whole society a unified, property-based, individualistic, and bourgeois-type legal order : that is, an order that had been at best partial and fragmented before the Revolution, except for traders - those agents had taken this step centuries earlier (Boucher 1804).

New international trade theory would then suggest that over the following centuries the very forces which had benefited from domestic market integration would militate for trade opening: hence the pick-up in the trajectory of economic development, on Figure 1, from a rightwards to an upwards trend –our fourth historical era. This produced the first stage of economic globalization, between the 1870s and 1914 (O'Rourke and Williamson 1999); and, after the mid-20<sup>th</sup> century brake-down, a second round of globalization progressively emerged from the 1980s' onward, at a time when domestic economies were fully integrated and (again) liberalized<sup>20</sup>. On Figure 1, the arrow of secular trajectory is now almost vertical. But at that time state structures have become considerably more developed and complex than when the initial Westphalian contract was sealed. How trade and economic growth on the one hand, political regulatory orders on the other would develop and interact is at the core of our discussion.

### 3.2. One constitutional agreement and two amendments

The initial, absolutist version of the Hobbesian contract comes out as a unique and very powerful settlement, though also a very simple one as far as economic transactions were concerned. In fact it only traded civil and commercial security against taxation and allegiance. Indeed, there is not much more to be found in the 1673 *Ordonnance du Commerce*: it only wrote into law the basic rules and institutions of a decentralized market economy and certainly did not attempt to shape “market outcomes” and orient them towards some

---

<sup>20</sup> In a Weberian perspective, the Westphalian State could thus be analyzed, with hindsight, as a self-destructive vehicle of eventual global marketisation: it would have freed individuals from local, communal constraints, and they would then get rid of it in order to escape on a global scene – of which constitution is the subject of this paper.



politically or socially preferred results. This early market constitution may thus look very “liberal” or even libertarian, although it only governed exchanges in an economy whose supply side was otherwise heavily regulated, both externally (foreign trade) and internally (corporations still ruled). More important from our long-term perspective, this basic and modern constitution was later completed by two major constitutional amendments.

First, a Bill of Right was added, in England, then in the United States and France. Absolutism was abolished as citizens imposed on rulers strong constitutional guarantees to their fundamental rights, in order to balance the formidable power of constraint they had conceded them. The basic rules of a privately-driven economy (property rights, freedom of contract,) and Human rights or *jus cogens* (habeas corpus, rule of law) were thus bind together in a new constitutional contract where the liberal public/private relationship was extended from the economic to the political realm.

At this point, however, democracy was not warranted since political capacity was generally limited to the wealthiest (though not in the US). The latter extension of universal suffrage then further increased the legitimacy of this political contract. And as delegation extended, the sovereign became more widely recognized as the ultimate provider and guarantor of basic rights, or general rules of Justice. Identification then came in: whereas, following economic historians, the 19<sup>th</sup> century witnessed the most important steps towards the integration of national economies, political historians insist on the emergence of integrated national polities, possibly democratic ones. The brake-up of local markets and the integration of local polities were simultaneous, as railroads and monetary unification were paralleled by the extension of national political parties and the media. Of course there was nothing here like a kind of natural, smooth non-conflictual evolution: each reform or evolution was obviously resisted by many social actors, linked by occasional or more permanent convergence of interest. Beyond are as well more structural conflicts, including class conflicts, which of course have played a major role in shaping each national experience<sup>21</sup>: the fact that (mature) liberal orders are founded on equal legal rights, on an ex ante basis, so that market competition becomes possible, does not imply that there were no core and fringe players. Most labor or socialist movements explicitly fought for an extension of equal rights across society, rather than for the abolishment of this core principle.

---

<sup>21</sup> In this sense, although our analytical language differ very much from that of more holistic or macro-oriented sociologists, or historians, we do not contradict here the approaches defended for instance by Tilly (1990), Moore (1966) or Anderson (19) or Skocpol (1979)

On this basis, a second constitutional amendment was slowly written, from the latter decades of the 19<sup>th</sup> century onwards. With industrialization, urbanization, democratization, plus the emergence of a large working class, and early elements of a consumer society, the demand for a more active management of the economy became more vocal. Three instruments were progressively mobilized to these ends, all of course under the control of the sovereign: fiscal resources, money, and law. Each of them was actually operated by a specialized body of rational-legal public bureaucracies that progressively endowed national states with a unique capacity to regulate and monitor the micro-level operations of markets.

Law was arguably the most discrete and benign of those instruments, whose regulatory capacities were extended on a piecemeal basis. By mid-19<sup>th</sup> century, for instance travelers were first protected against the hazard of train travels and consumers against bad food; later labor market regulation came to the fore, with competition policies or banking regulation for instance (Caprio et Vittas 1979, Golding et Libecap 1994). In, the aftermath of each World War, western governments extended further the reach of public policies, on the basis of both interventionist supply-side policies and Keynesian demand-side macroeconomic management. Typical mid-century Social-democratic States explicitly presented this ever increasing array of policy aims as an extension - if not a completion - of the universal rights written into the first liberal amendment (e.g. the social and environmental rights). Indeed the expectation was very strong that the collective interest called for the development of a new social compact in which satisfying social preferences and the regulation of markets went hand in hand. On figure 1, this mid-century cycle could be reflected by a short-time reversal in historical trends: international markets fully collapsed during the 1930s', and after the war regulatory interventions in domestic markets for goods and production factors clearly reduced the impact of market competition.

Late 20<sup>th</sup> century reforms then paved the way for a joint process of domestic and external liberalization, which reversed part of the earlier 'corporatist' order and reached a much greater number of countries. Eastern Europe, Russia and China joined global markets as they reformed their domestic economies and public orders. Other countries like India and Brazil that had remained on the margin of earlier phases of trade liberalization were included. Note also that the reduction in tariff and non-tariff barriers to trade was instrumental in fostering global market *and* in reforming local regulatory orders; this is most clearly the case with the EU Single Market. Hence, in Weber's terms, internal and external "openness" increasingly converged, as "national markets" steadily evolved towards a single world (or European)

market. This is indeed a defining pattern of the current globalization experience, also probably its main difference with the pre-1914 experience: on the one hand, the convergence between national and global markets is arguably stronger, and on the other the growth of the regulatory and policy-making capacities of national States has made cross-border relations much more complex to negotiate. Since 1945, this has been reflected in the ever larger number of international agreements and organizations that had to be established in order to control transaction costs, co-ordinate complex legal orders and jointly produce international public goods. The question which we address in this paper is whether coordination between sovereign states, that still receive the ultimate constitutional delegation from their citizens, is still adequate to a world which has become far more integrated than ever before.

**Figure 2: The Consistency of Social Contracts Regimes**

<b>Social contract</b>	<b>State model</b>	<b>Category of norms</b>	<b>Ultimate guarantor</b>
Coercers/ producers pact	Post-1648 Leviathan	Contract enforcement	Civil courts
Bill of Rights	Classical Liberal State	Natural rights/ rules of Justice	Supreme Courts
Liberal-Social-Democrat	Policy-making State	Protocols and policies	Parliaments

### **3.3. The end of Weber's arrow ?**

The story we have told so far is then twofold. We have first proposed a schematic description of the development of the State, more specifically the modern, liberal State that typically emerged in Western Europe from the 17<sup>th</sup> century onwards. After the initial Hobbesian pact, which guaranteed the security of persons, property rights and transactions, long-term evolutions were marked by a steady extension of citizens' rights and of the supply of public goods and services. Those rights then proved a powerful, often revolutionary force beyond the unification of national polities and economies. And as local and traditional orders were steadily eroded or even destructed, agents were emancipated and became increasingly autonomous and competitive – our second long term trend. This was reflected typically in an increasing entrepreneurial and innovative pressure in the economic sphere, and growing participation, or contestation, in the political realm.

The point, however, is that this joint process of constitutionalization and individual autonomization unfold within a framework where private/ public interactions exclusively developed within the borders of each nation-state. Symmetrically, the international order remained governed during the Westphalian era by alternate, indeed pre-Hobbesian rules where sovereigns were expected to act in an utterly self-interested, power maximizing,

realistic manner. Even the classical post-1945 multilateral regime remained for decades within the range of this framework: private actors – citizens and traders – were clearly prevented from entering these cooperative arenas, designed by the states for their exclusive use.

Since the last decade of the 20<sup>th</sup> century, however, these twin secular trends have started to diverge. Today, if citizens or traders believe that their rights are badly treated by their sovereign, or that policy-making is costly and inefficient, a significant proportion among them can move across borders and reallocate their assets, with minimal transaction costs. That is, after agents had been emancipated from traditional stable communities, thanks to the emergence of liberal nation-states, they are now increasingly able to opt-out of their original, liberal public order. In the worst case, they may attempt to cross the Rio Grande or the Strait of Gibraltar. Better endowed citizens and traders may alternatively develop their business in Brazil if they want, invest money on the Mumbai Stock Exchange, take a job in the Netherlands and vote in Spain. If they have trouble with a business partner they may also opt for a US court, or settle with a Parisian arbiter. And they may as well contribute time or money to Amnesty International and the Agha Khan Foundation. At least, citizens expect to have all those rights, and many more do exercise such rights than at any point in time before. In a nutshell, for better or worse, mankind has never been as far along Weber's millennial arrow. And this, of course, has a huge impact on the existing constitutional orders, both at the national and international level.

#### **4. The dynamics of world constitutionalization**

As pointed out in the two previous sections, the dynamic constitutionalization - in particular of the liberal sort - has led to the development of national compacts that first established strong and extended individual rights, which distribution is now strongly unequal at the global level due to very heterogeneous constitutions in force. This process also supported strongly the development of competitive markets, hence economic growth and the pressure to integrate exchanges internationally. Both trends favor the development of interdependencies at the global level, due i.a. to trade, to the permanent and massive migration of citizens, to technological progress, etc. The result is that an increasing number of issues are now essentially global, calling for a global regulation. Indeed, the logic of governance points out the necessity to centralize the provision of order when public goods have to be brought homogeneously to a given population. This does not imply by all means that governance should be totally centralized at the global level. The economics of governance points out the necessity to rely on multilevel governance due to the intrinsic boundaries of fully centralized governance. This means, however, that the current situation leads to ineffectiveness: at such a stage

problems of global concern call for some centrality in governance at world level, whereas strong public governance capabilities remain available only at the national level. We therefore remind the reader the reasons why global public governance might be needed (4.1) before showing why the current coordination regimes among nation-states do not allow efficiency and do not guarantee the order desired by many citizens and merchants worldwide (4.2). We will then highlight the factors at play in the possible evolution of the current situation (4.3), which will lead us to propose in the last section four possible scenarios of evolutions corresponding to different dynamics of relationship between citizens and national elites (5).

#### **4.1. Justifying Global Constitutionalization: The Logic of Multilevel-Governance**

As already pointed out, there are two ways to contrast alternative ways to provide an order: first, one can compare public and private provision; second one may contrast various levels of centralization of the provision. Indeed, a uniform order can be centrally provided to the whole society, meaning that every agent complies with a common set of rules implemented by a mechanism that overhangs the whole society. Alternatively the collective order can stem from bilateral (i.e. contractual) arrangements resulting in a collection of heterogeneous and local orders issued by the “basis”. Following the seminal contributions by Oates (1972, 1999), Barzel (1989) and North (1990), and more recently by Greif (2006), economists have been dedicating several applied and theoretical analyses of the economics of centralization vs. decentralization of the provision of an order. Part of this literature has recently been tentatively synthesized by Brousseau & Raynaud (2006, 2007). The analysis is summed-up below.

It is important to point out one essential assumption behind the analysis. Agents are considered to be heterogeneous, meaning that they have different endowments, different preferences, and different localization in the networks structuring a society. Therefore, they have contrasted coordination needs and specific preferences on the matter. Since they have different endowments and different localization in relational networks, they are in asymmetric situation when they have to “negotiate” the establishment of common orders. Collective orders are therefore built around kernels of agents sharing close preferences in matter of coordination and able to agree on a set of rules reducing transaction costs among them. Other agents that may have different preferences can have an interest in adopting the same rules, because these rules reduce their coordination costs as compared to non-adhesion. However, would they exist, alternative set of rules would better meet their needs. The conclusion of this analysis is that collective orders are made of various “circles” of individuals adopting rules designed to meet, above all, the coordination needs of a kernel. Those who are in circles too far from the kernel incur maladaptation costs defined as the difference between their first best solution and the cost of the collective order they have to accept. Orders are therefore “centered” and “sponsored”; some individuals had in the past an interest in promoting the use of their preferred rule by others, and were successful in inciting them to adopt it.

According to this “vision”, it is possible to identify a reduced number of factors influencing the benefit/cost ratio of settling rules and organizing enforcement, centrally or not. “Centrally” means that a common order applies to the whole society. The reverse means that different orders co-exist. The more centrally provided an order is, the more mandatory is this order for the individuals as they have fewer alternative (exit) options.

The benefits of centralization (which are ipso facto the cost of decentralization) are due to the combination of three effects: (i) scale and scope effects due to the sharing of fixed costs to design rules and establish means of supervision and constraints; (ii) learning and specialization benefits due to the ability to dedicate specific means to the design of rules and to their enforcement; (iii) the reduction of collective welfare losses due to the internalization of interdependencies among individuals and groups. Conversely, centralization generates inefficiencies due to (i) “static” maladaptation resulting from the increasing heterogeneity of individual preferences as the size of the group to which common coordination solutions are applied; (ii) “dynamic” maladaptation due to the difficulty to renegotiate common rules in a more heterogeneous group while core members of these large groups have less incentives to renegotiate; (iii) higher information asymmetries (linked to number and heterogeneity); (iv) increased enforcement requirements since (i) and (iii) incite individuals to cheat; (v) the rise of private capture since kernel’s members have increasing capabilities to benefit from their asymmetric position to externalize costs on peripheral members and to capture rents on them. Due to these centralization or decentralization costs there is not best way to establish an order. Centralization and decentralization each has its own advantages and should be combined to simultaneously provide complementary governance services at different levels. Two phenomena are at play here:

- “Subsidiarity”: a mix of generic, local and inter-individual governance is the best way to reduce coordination costs by addressing the various coordination problems at the right levels. These problems are well known by legal specialists and political science scholars when they have to deal with harmonization and federalization processes.
- “Checks and Balances”: the various levels of provision of order can also control the weaknesses of the other levels. These issues are well known by political scientists who insist on the necessity of (horizontal and vertical) decentralization of authority (Voigt, 2003, 2007).

All these calls for multi-layer institutional frameworks, combining various levels of local regulation, on the condition that they are arbitrated by a last resort level of governance aimed at dealing with the interdependencies that exist at the level of the society as a whole.

## **4.2. The world we are in: the Cluster model**

In the very long term the fall in the cost of exiting national constitutions will certainly open the road for an eventual realignment of the overall set of public orders under the umbrella of a future world constitution. In the short term, however, these trends may cause a serious crisis of governance at the

national and international levels. It is important to understand why this does not solely reflect mere issues of coordination or information as often stated by scholars ( ).

Historically, at the national level, the public regulator in last resort was very strong, both because it was the most generic one — to the limit, individuals had no exit options — and because it benefited from a strong delegation. Local private authorities had a low capacity to challenge the public order, as they were subjected to a powerful hierarchy of norms and laws, validated by the state monopoly on legitimate coercion. They could thus be oriented toward efficiency, while being controlled by the public orders for risks to act against the general interest. Complementarities between private and local regulations on the one hand, and public and generic ones on the other resulted from this. The former allowed agents to benefit from more efficiency<sup>22</sup>, while avoiding risk of capture; because the public regulator was able to oppose the “collective interest” to private regulators (via antitrust, minimal regulatory standards and control of the private regulators’ behaviors) and because citizens tried to control the public regulator<sup>23</sup>.

In the international context, this hierarchy between a public regulator and other regulators does no longer hold (see figure 3). At best, national public regulators promote the interests of only a sub-set of the global population. At the same time, since they are local rulers, they are in competition with other rulers. Their capacity to fairly weigh the preferences of all the citizens and entities under their jurisdiction tends to be challenged by the “forum shopping” among public regulators that is accessible to some categories of stakeholders. Public regulators therefore tend to take into considerations the interest of the more “mobile” stakeholders only, which might carry them away from the collective interest. Being no longer the holders of the “general” interest, their legitimacy in setting norms is weakening.

In addition, their enforcement capacity shrinks. Within traditional nation-states, the strength of the public regulator draws from its ability to fully exclude outlaws from the social game. At the international level, this capacity of exclusion is weak since citizens do have some exit options (think to fiscal competition). This generates a paradox. On the one hand, no public regulator can guarantee in last resort any global regulation against bypassing strategies. On the other hand, public regulators are the only players benefiting from the much needed enforcement capabilities to implement norms fitting the general interest.

A corollary proposition of this statement is that, while private regulators establish orders covering only a subset of the global population, it may occur that this population is larger than those concerned by public (national) regulations. In addition, the enforcement capacity of such private regulators tends to

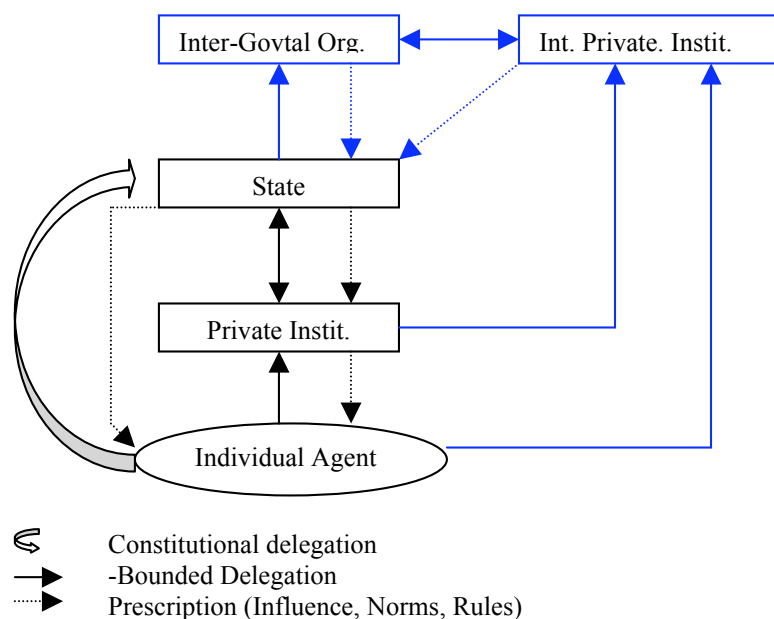
---

<sup>22</sup> Efficiency is not the primary target of the public regulator, both because its delegation leads to balance efficiency with other criteria (like equality), and because as a generic regulator, it is not (or only weakly) challenged by alternative collective providers of order

<sup>23</sup> There is however a risk of collusion between public and private regulators to the detriment of the stakeholders. Again, this risk can be controlled by an appropriate organizational design of public authorities.

increase because they can group at the global level all the individuals and organizations sharing common characteristics or preferences (e.g. all the stakeholders involved in a given industry). This provides them with enforcement capacities that can surpass those of public regulators (in a given domain only, however). Though they benefit only from a weak delegation, private regulators might thus benefit from a substantial legitimacy to establish an order in a given domain, because they are seen as driven by efficiency considerations. Figure 3 synthesizes this model that, admittedly, might have several versions (depending upon the level of coordination among national states, and of the extent of the prerogatives of IGOs and of the International Private Regulating entities).

**Figure 3: A Schematization of the Current Global Governance Organization:  
The Cluster Model (1)**



The ability to implement a global — and therefore a “no-exit-option” — order in a certain domain is a major concern, because it might be considered as “excessive” from two points of views. First, this regulation can impact on non-members of the sub-groups that delegate their capacity to a regulation authority. Since private regulators consider only the interest of their principals, and since public regulators no longer control the side effects of their regulations, global private regulators can harm the interests — even the fundamental ones — of outsiders. Second, these concerns are reinforced since we are speaking of “coordination platforms”. Adopters of an order benefit and generate positive network externalities in the sense that all the “users” of a common order experience transaction cost reduction in coordinating among themselves. Network externalities favor the emergence of monopolistic coordination platforms, which could favor the capture of rents both between kernel’s members and marginal circle’s members, and between “users” and “non-users”.

From this, an important proposition follows: in the absence of a last resort regulator who would have received a strong delegation from the entire global population, the benefits of a centralized definition



and of an implementation of the general interest cannot be obtained. Global regulatory challenges thus stem from the combination of two facts. First, national governments keep the privilege to define the collective interest, even though they are unable to implement it and even to define it: they cannot have, and do not have the legitimacy to weigh the preferences of all citizens worldwide. The outcome is a major discrepancy among public orders when they are dealing with problems of global interest. Second, because agents have nevertheless global governance needs they try to organize global self-regulations processes. But these “private” regulations further weaken the capacity of the national state to meet the collective interest. Private global regulations are not built according to the logic of collective interest but to serve members of “clubs”. Moreover, they are not coordinated across domains. This hinders such clubs’ capability to produce collective efficiency net gains.

We call this international order based on a fractured, incomplete and non-hierarchical regulatory regime a “cluster model”. In our view, it is ultimately characterized by an open competition between governmental and non-governmental norm-setters, though on an international playing field that is devoid of an ultimate arbitrator endowed with a capacity to impose on other regulators, private and public, a binding, legitimate hierarchy of norms and laws. The question is whether this generic model is stable in the long run, in spite of its micro-level instability, its low efficiency, and its contested legitimacy.

#### **4.2. Driving and hindering factors: Citizens vs. Elites**

Convergences between the constitutional order before the liberal transition and the experience observed today, at the international level are clearly manifold: the confusion between private and public norms, the inequality of rights between agents, an inefficient provision of public goods, failures to integrate markets and exploit economies of scale, etc. Both processes can thus be expected to deliver comparable pressures towards constitutionalization, that would deliver for instance : a more equal distribution of fundamental rights, a working hierarchy of norms and jurisdictions, greater autonomy for citizens and traders, increased economic competition, a more efficient provision of public goods from the local to the global levels.

Yet, the defining difference between these two processes of constitutionalization is as well obvious: today, existing states with their complex inherited structure concentrate an impressive number of specific institutions and regulations processes that may oppose powerful resistance to any large-scale reallocation of delegations. The establishment of a global constitution would actually require that the tight networks of regulatory powers and bureaucracies now embedded in states institutions be broken up, so as to allow for their reallocation, both at the infra- and supra-national levels. A world constitution, in other words, would produce altogether more centralization and more devolution – depending upon the issues at stake and the available resources on the ground. Its rationale would be, first of all, about the efficient supply of public goods across and within nations, plus a unification of

citizens' and traders' rights.

Resistance to this realignment would be manned, first and foremost, by national governing elites. They indeed control and manage the incumbent regulatory institutions; they are in charge of negotiating international agreements; and they obviously have a vested interest in defending the unique prerogatives associated with being the recipients of strong constitutional delegations. Hence, they would resist any attempt to circumvent them and strip the national states from their ultimate privileges – the enforcement of fundamental rights, the definition of the (national) common interest, the division of regulatory labor between state and sub-state public regulators, and the capacity to broker redistributive contracts between interest groups. That being said, a standard, Public Choice objective function would offer a too narrow account of their behavior. States' interest is also defined by their being political aggregators, which may put them under explicit though possibly competing popular demands. They are in charge of the common interest; though they cannot define it as they want, especially in a contestable political market. Their unique capacity to negotiate domestic political alliances then adds a degree of indeterminacy to their strategy, which will bear on the possible trajectories. For instance, governing elites may align themselves with anti-globalization clienteles in an attempt to jointly defend existing rents: large social groups may coalesce around a redistributive social compact; the professions and social interest groups are often aggregated around national norm-enforcing bodies; marginal producers would clearly be threatened by increased competition, etc. Alternatively, these elites may side with more competitive forces in an attempt to support economic growth, hence their financial resources; or they may aim to have a stronger say at the on-going, constitutional world-convention. In other words, all the classical scenarios of revolutionary change, as studied at the time of the modern liberal revolution, may be observed again – from a slow, elite-driven reform strategy to the 1789 mass uprising model.

As in those past historical experiences traders and citizens will be the main forces for a realignment of delegation contracts. Just as they fought in past centuries for equal and transferable private rights; for strong constitutional protections; and an efficient supply of public goods, similarly, in the future, industrialists and financiers, citizens and militants will be the main forces fighting for a realignment of existing public orders. We insist however that the balance between these two types of actors - or more precisely two motives for political action - may vary depending upon circumstances. Traders are primarily interested in obtaining lower transaction costs, so as to extend shipping lines and support productivity gains; the individual profit motives then aggregate in a typical manner into economic growth and confront agents to the deadweight costs of a dysfunctional public order.

On the other hand, when citizens enter the political scene they are driven by a self-standing notion of public interest different from their private motives though not necessarily contradictory to them. Designing the superior rules under which future private activity and weak delegation contracts will be negotiated is different from actually entering these decentralized transactions. Competing interests

have to negotiate, alternate solution to generic coordination problem may be adopted, and the division of labor among public institutions must be addressed. At this point, the material private interest of individual agents may not easily select or design in a predictable manner between alternate constitutional options. Designing a constitution does not happen through decentralized aggregation but via a call for an explicit, collective intent, if only because this may just be the ultimate form of collective action in the historical experience of national societies.

This dualism of motive or intent is instrumental in our agent-driven differentiation between scenarios of global constitutionalization. Public and private motives may vary a lot even within a short span of time. And, depending upon which type of agent dominates society when delegation contracts are redesigned, the eventual outcome may vary hugely. Whether the main thrust of the demand for reforms is the regulation of international markets or the extension of fundamental rights across borders, the constitutional outcome may be quite different. We know for instance that since the early colonial experiences, traders and financiers have rarely been a force for civic rights in the countries they visited. There is no obvious sign that this has changed yet.

By the same token, what may now appear as a working, reasonably stable, though second-best equilibrium may progressively attract increasing, eventually unsustainable criticism and grievances. It is also possible, for instance, that any movement in this direction may rapidly abort, reflecting the fact that the world is actually stuck in a sub-optimal public order, where hindering actors are systemically stronger than driving actors. Alternatively, a multitude of distinct composition effects – at the national and international levels – may end up into a threshold effect. Loopholes, waste, inconsistencies and contradictions would only add up, so that the mass of un-anticipated, undesirable effects would grow disproportionately over time. Typically, redistribution of wealth, power, and personal endowments would end up in a mess, for being neither coordinated from state to state nor from organization to organization (Ackerman, Von Parijs, Stiglitz). Although the design of each weak delegation contract to IGOs would be limited and targeted, concatenation in a non-transitive structure may cause increasing inefficiencies and opacity. Therefore, once a certain level of powers is delegated to non national institutions, and in a context of increasing dissatisfaction as regards overall regulatory structure, allegiance may shift. Eventually, a political re-ordering may become irresistible, either in a gradual or a discrete manner.

Alternative scenarios may then emerge and diverge in a context where game-theoretic constraints will play a large role. In other words, the result of a possible process of global constitutionalization will be thoroughly contextual. A process of global constitutionalization may for instance result from a sudden crisis of governance, which would drive a great number of actors to the conclusion that a break up point has been reached. The feeling that the existing institutional set-up has become unsustainable, both in efficiency and equity terms, would then call for major re-ordering. Alternatively, constitutionalization may take place on a sectional basis (say, security, climate change or public

health) with the three constitutional power *à la* Montesquieu being transferred on a case by case basis. This may later force gradual re-arrangements among other specialized institutions. More powerful intergovernmental organizations endowed with a stronger constitution may progressively work as a single kernel and organize relations with other institutions along their own rules. If such processes occurred, world leaders or citizens would not necessarily have to meet in Philadelphia, Brussels or Beijing and actually write a constitutional text.

Critically however, we assume that if citizens have the upper hand, a unitarian political structure will eventually emerge, where individual rights, specifically civic rights, will become more unified across the world. Conversely, the prevalence of national elites implies that national states would survive, within a more or less egalitarian international framework. Traders ?? Yet, having the upper hand does not necessarily imply that citizens, traders or national elites would actually be able to draft a global constitution. If collective action fails, they may try to design an alternate and less demanding solution to their coordination problems. Namely, the constitutional texts would remain national, whatever the cost in terms of economic efficiency and political legitimacy, with one of them possibly becoming hegemonic.

Brought together, these two variables produce the four following constitutional scenarios, which are derived from the basic “Cluster model” and the main driving or hindering factors that we have identified as effective beyond the dynamic of delegation. The federative model is the result of *both* the citizens ascendancy over the elites, and their success in establishing a global citizenship. Conversely, the present-day Cluster regime, or a reformed version of it, would correspond to *both* the continued supremacy of elites and their refusal to write a global constitution. The Hegemon and the Confederal models are the logical, complementary alternatives.

	<b>Citizen-led move towards constitutionalization</b>	<b>Elite-led move towards constitutionalization</b>
<b>Global Constitutionalization</b>	Federation	Confederation
<b>National Constitutionalization</b>	Hegemony	Cluster

## 5. Scenarios for the emergence of a future world order

### 5.1. The (rationalized) cluster

In the first, most simple scenario, the national states (read: the governing elites) succeed in maintaining control over every non national entity, public or private, interstate or supranational; they also deliver some rationalization of the overall institutional order so that

systemic opposition remains muted. “Decentralization”, “subsidiarity”, “autonomy”, *and* ultimate control would be the keywords in this state of the world; a degree of self-management may even allow these institutions to develop networks of interdependence that would bind them together and limit horizontal transaction costs. But the overall structure, as regards IGOs, would remain founded on traditional multilateral principles.

In turn, citizens and traders would mandate rulers to rally international standards and set up joint international ventures with foreign partners. They would actually keep harassing their home governments and press them to globalize, instead of stubbornly sticking to national recipes when trying to address global issues. The threat of being actually overrun and overwhelmed would be indeed a major incentive for step-by-step incremental progress of the cluster model. The point is that the elites would always favor norm standardization and coordination over full-fledged interstate policies. They would always limit the resources endowment of contain intergovernmental entities and design complex agency and monitoring contracts. All this would guarantee that elites never renounce to their monopoly over enforcement processes.

## **5.2. The Hegemon**

What happens if, for instance, entrenched national elites fail to assess efficiency and equity-driven demands for political reform? What happens if some States actually collapse and are therefore unable to enter strategies of international re-ordering? To put it differently: what would happen if collective action between states fails, for whatever reason – redistributive deadlock, absence of mutual trust or excessive uncertainty as regard future evolutions? The answers are simple: citizens would take the lead and try to converge towards a more satisfactory regulatory order.

In a first such scenario they would circumvent national kernels and join an alternate, more efficient one. They might for instance “opt out” individually from the domestic constitutional system and place themselves under the shadow of the hegemonic state’s constitution. Emigration and diasporas are standard examples in our contemporary world, but the Act of Caracalla (?) in Ancient Rome was actually designed as a conduit for such individual strategy. Alternatively and more potently, agents may lobby their home authorities to obtain all necessary adjustments to hegemonic norms and rules, so that the domestic institutional framework would shadow the Hegemon; coordination would thus become easier, and transaction costs would diminish. A typical example is dollarization: if a weakly constitutionalized, local central bank fails to resist the redistributive claims of various social

groups, and keeps delivering high inflation, renouncing the privilege of a national monetary policy might end up as a rational option.

In this model, henceforth, the “supply” of constitutional rules comes from the *primus inter pares* state, or Hegemon, whose regulations are voluntarily adopted by outsiders, without any discussion or bargaining. Strong delegation to the hegemonic state is *de facto* rather than *de jure*, implicit and gradual, rather than public and democratically agreed. This raises problems of safeguards: foreign citizens are not represented whether in the checks and balances or in the policy-making system of the Hegemon, though they would still prefer a position of second rate junior citizenship to what their national state offers in terms of accountability and capabilities. More important, as the national elites opt out of their own national regulatory order they tend to drain its legitimacy and to weaken the national compact that binds together individuals and social groups in a pact of mutual assistance. In this case, all three layers of constitutionalization– market rules, basic rights and public policies – may be progressively turned down and lost. This is why this trajectory may actually end up in a unitarian constitutional order, centered on a global or a regional hegemon, and surrounded by failed states.

### **5.3. The Confederation**

In the hegemonic model, agents *nest* solutions to coordination and transaction problems within the domestic institutions of a particular state (say, the USA or the EU). Alternatively, they may *pool* their problem-solving resources within international organizations and regimes, but this requires that a supra-national constitutional text is written.

The Confederation is a first model of this type, where the production and allocation of some public goods (say climate, food security or health) is transferred to ad hoc, constitutionalized, supra national public bodies. The definition, adjudication and enforcement of norms – that is the three Montesquieu powers – are thus jointly delegated, though grass-root implementation may still rely upon national bureaucracies. In the EU for instance, farm, trade and competition policies are actually pooled at the community level, though they are implemented by national bureaucracies at the micro-level; the number of bureaucrats at the Brussels Commission remains indeed extremely small, compared with that of member-states. While most IGOs are plagued with the same necessity to have their decisions implemented by the bureaucracies of their member states, some may soon reach a stage beyond which their own body of bureaucrats will be able to do the job. A good case in point are the IAEA inspections of

nuclear facilities in rogue states since no national state can send a civil or military delegation to another state territory.

As evidenced by the increasing influence of IGOs, the Confederation is typically “elite-driven”, and it is actually the result of a contract between national elites, or kernels. And because citizen’s consent comes *ex post* rather than *ex ante*, decision makers have a fair capacity to design the delegation contracts that best respond to their vested interests, within the framework of a given mandate - they must reduce transaction costs and manage commonalities. Their interest is also reflected in the bounded character of the transfer of sovereign powers. First, national governments remain entrusted with the last resort protection of fundamental rights. Bills of Rights thus remain national, so that citizens of a confederation are not equal across states. The main consequence is that inequality would be less pronounced in a confederation than in the cluster or the hegemonic model. Second, the horizontal division of labor between supra-national bodies is not necessarily strong and efficient. Contrary to a full-fledged federation, a confederation does not assume every function of a global coordination platform, specifically as regards trade-offs between sectoral or national interests, i.e. between the several existing global policy-making institutions. Ultimate coordination remains in the hands of national governments, because they still define the principles of international solidarity, and locally the general interest. This, of course, is an obstacle to the capacity of the confederal power to aggregate further policy elements, in a bid-up process.

Despite these limits and drawbacks, the stability of confederations should not be underestimated. Because the initial delegation contract reflects the presence of strong networks and fixed costs effects (like norm-setting), the trade benefits, hence the exit-costs of a confederation are high;<sup>24</sup> a “fall-back scenario” would thus require considerable systemic failure. An open question is to what extent inequality between citizens of various origin may endogenously lead to a confederal model.

#### **5..4. The Federation**

If the elites fail to establish either a working Cluster regime, or an elite-protecting

---

<sup>24</sup> If ever the United Kingdom would decide to withdraw from the EU, for instance, rewriting a whole set of market regulations would just not make sense; in most cases, this would only create new barriers to trade. In other words, the incentive framework it would be confronted would probably lead it to make the same choice as Switzerland today : adopt (or keep) the vast majority of EU regulations, while having no voice in decision making.

Confederation, then an agent-led solution may be imposed on them. But rather than adopting the rules of an Hegemon as the result of a least-bad calculus, citizens may take the control of an emerging, global public sphere and agree on a global Constitution. Collective action would thus lead to a direct transfer of constitutional delegation to a global government, which would altogether enact law, adjudicate conflict and enforce both<sup>25</sup>. And because the same constitutional principles, or strong delegation contract would apply to every citizen of the world, the resulting regime would be unitary and egalitarian.

Such a model would have its origin in a « Citizen's uprising», driven by dissatisfaction with both the economic inefficiency and ethical unfairness of the existing order. The balance between these two motives would be however different from the three previous scenarios, which were primarily driven by efficiency-enhancing concerns: they reflected a merely collateral interest for the equality of rights across countries, if only because their promoters intended either to remain loyal to their national states, or to shift allegiance to the Hegemon. In the case of a federal uprising, the relative, net efficiency gains in terms of transaction costs would probably be smaller, both vis-à-vis the gains obtained under the three other regimes, and vis-à-vis the gains now within view as regard the universalization of individual rights.

In other words, political mobilization would not come mainly from the governing elites or the traders' interests, but from the (evolving) part of the citizenry with the strongest leaning for the ethical defense of universalistic values. The call of liberty and equality would be the stronger, just as in 1776 America, in 1789 France, 1848 Germany or 1981 Poland. In those countries, public resources were not only badly managed, if not wasted; what had become unbearable was the inequality of rights among those living inside the political kernel and the masses who lived at its margins. Institutional reform and rationalization were of course expected to support economic growth and the supply of public goods. But equal rights, market access and a free voice would also make sure that the allocation of private wealth and public goods would be *ex ante* contestable, and *ex post* legitimate. Equality under the rule of law would govern both the public space and the market place.

A paradox is that whereas a federation would require a unified political movement structured

---

<sup>25</sup> There are six such layers of power. The three layers of *capabilities* are defined by the Social Contract itself:

a capacity to *define the basic rights* attached to a particular realm of activity

a capacity to *enforce rules*

a capacity to *organize the relationships between rights owners*.

The three layers of *rules* are:

*principles of justice* and allocation processes;

a *constitutional system* organizing the mutual powers of the executive, the legislative and the judiciary;

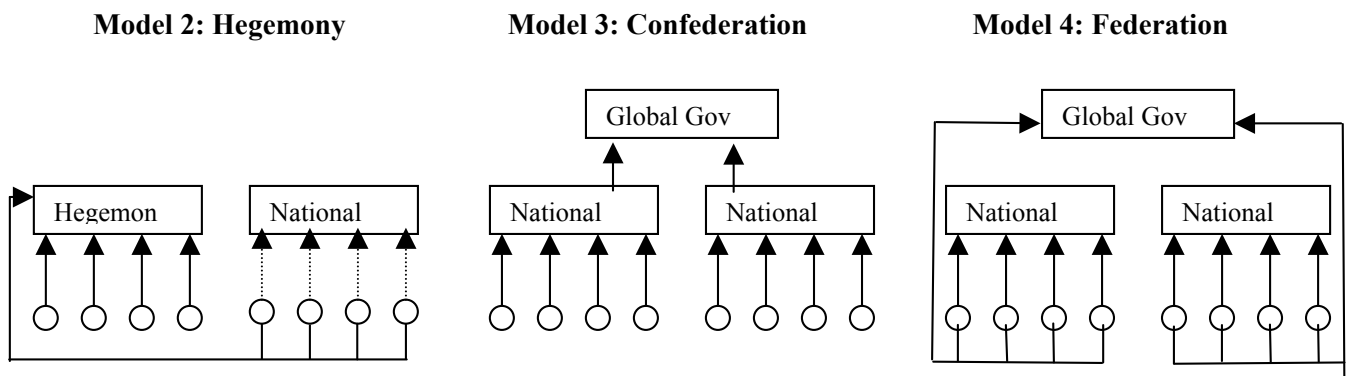
the *protocols and procedures* needed to communicate between the people and their rulers, such as elections and conventional participation



by strong collective value, the actual public order that would be established would not be at all centralized. A global, federal state would probably be indeed the least centralized state ever seen in history. This would be a regulatory order where institutions adjust to purely functional prerequisites: public goods and services would be produced at the most convenient level, from local communities up to the world scale. Local preferences, scale economies, issues of transparency and accountability, and the exclusive or non-exclusive character of the respective good, the relative benefit of competition between providers or regulators: all these variables would determine who should produce each public good, and at which level of governance. Equal citizens would endow them to their local authorities as regard the management of schools or to a World Organization in the case of climate change. The production and allocation of those goods would then be considered as constitutionally governed, provided the three Montesquieu powers were attributed to independent agents, whose joint rules of interaction would be defined in the initial delegation pact. Representation of interests, the adjudication of disputes, and guarantees of execution would indeed establish an efficient and legitimate production function for the respective public good.

The sole overarching structure that would be absolutely needed in such a world, would be a meta-constitution that regulates the evolving division of institutional labor, along a kind of generalized principle of subsidiarity. This ultimate regulatory power would probably be entrusted to a Supreme Court, which would review the constitutionality of other governing entities, adjudicate their conflicts of jurisdiction, and enforce a Universal Declaration of Human Rights. This sovereign Court might then be completed by a Legislative and an Executive powers, for instance if trans-national trade-offs were to be decided or principles of solidarity enforced. The point, however, is that in such an ideal-type of a general-equilibrium between public institutions, the distribution of legitimacy would be aligned with the distribution of efficiency, and would thus be fragmented. But individual rights and loyalty would be global.

**Figure 4: Three models of Global Regulators**



## 6. Conclusion: What we cannot explain with this model

In this article we proposed a framework for analysing the long term evolution of political orders in terms of delegation received from, or withdrawn by individual actors to their rulers. As they try to manage their collective action problems to the best of their interest, actors first differentiate between weak delegation contracts, that are typically targeted and easy to exit, from strong or constitutional ones. In these latter cases, powers being transferred are more comprehensive, generally more complex to administrate and, critically, they leave the ruler with a capacity to oppress agents and extort wealth. In other words political orders are asymmetric: agents living at their core or fringe benefit from unequal, generally additive distribution of rights, political capacities, wealth, exposure to risk, or opportunities to valorise acquired resources.

Of course, from this point on, it would be hard to account for change if no independent force were added to the model. Revolutions would possibly overthrow existing orders but they would probably be doomed to reproduce the same basic political and social structure as before. Spartakist slaves or medieval millenarist movements had little chance to build more open, competitive and deliberative societies. In order to account for the emergence of modern States, and for their possible future replacement by a global constitution, we first assume that agents who attempt to change the rule of the collective game respond to both ethical or ideological concerns, and to their material interest. But we also add historical thickness to this individualistic perspective by drawing from Max Weber' sociology. Actors with a capacity to challenge the existing distribution of resources and power are very much shaped by the rights, formal or not, with which they are endowed, and which provides them with more or less extended autonomy – political and economic.

This helps us opposing two schematic models of constitution. On the one hand are what we call Despotic orders, where individuals have limited autonomy and where the overall legal structure is altogether fractured, explicitly unequal, and poorly integrated from the political and economic points of view. Rights are not only unequal between core and fringe members, they are also different, specifically between fringe communities. Despotic polities and economies, as a consequence, do not support large-scale participation and competition, so that political and economic change, or development, is typically muted. Rulers are not often challenged by social mobilisation, economic growth is limited and social differentiation is stable.

On the other hand, Liberal orders are explicitly founded on the principle that individual rights are equally distributed across society on an *ex ante* basis. Because participation and competition become much easier, and because of equality of status, society may thus become much more integrated, politically and economically. The social and economic division of labour will increase and local orders will typically be integrated in a complex, cohesive hierarchy of norms and jurisdictions, where the ultimate constitutional rights of citizens are enunciated and enforced from the highest level down. Individual action will be shaped by a republican constitution and a Supreme Court. Conversely, local, community orders will have to be confirmed from above, before they will have adjusted to the policies and fundamental rights or, for instance, the orderly functioning of markets, election rules and public services. And on that basis, the actual structure of government – the supply of public goods and services - may eventually become more or less centralised.

This analytical framework then helps us accounting for two defining, historical moments. One belongs to the past: it is the century-long process whereby, in Western Europe, local municipal or feudal orders were overrun by emerging nation states. As traders and citizens fought for more equal rights and for a more efficient supply of public goods, they transferred their core constitutional delegation to the States. Physical security and market security were the initial components of this pact, before two amendments were added: a Bill of rights and, more progressively, a capacity and legitimacy by state administrations to provide an long-increasing array of public goods and services.

The dynamic of individual emancipation and enfranchisement did not however stop here. After they had benefited from the integration of national markets, which delivered huge gains in terms of economies of scale, traders, manufacturers and financiers started to militate for easier access to international exchanges. They wanted (specifically during the First and

Second globalization cycles), that their own liberal states, which had freed them from fragmented municipal orders, let them easily access global markets, while still offering them their large package of constitutional rights and guarantees. Today, an increasing number of citizens also defend that they are the forerunners of a global civil society, which should progressively impose on national governments the creation of a better, more equal, more efficient supra-national order. In other words, the old Westphalian alliance between free agents and nations states is now under stress, however lopsided the demands which the former still address to the latter.

This situation has a defining corollary: today's international order presents many patterns comparable to that of past Despotic regimes. The distribution of individual rights is hugely unequal across borders, the production of public goods is inefficient, markets are often badly regulated and, critically, there is no binding hierarchy of norms that structures the interaction between the private and public realms. Well-defended specific (private) rights may recurrently prove stronger than the common interest. And as a consequence, this order attracts comparable reactions than past, despotic regimes, by traders and civic militants. Integration, participation and the demand for a level playing field are indeed keywords for these new classes of global political entrepreneurs.

The main difference between the early modern political geography and the present one is however obvious: national states are much stronger entities than past local communities; they still attract considerable legitimacy, and they deliver a much more complex, diversified set of goods and services, which distribution is typically intertwined with a immense network of redistributive contracts which bind societies to their regulatory institutions. In other words, the circumvention of states and the loosening of these micro-political knots may well oppose insurpassable resistance to a process of global constitutionalization. States may be indeed the end of history.

The point we make in this article is thus twofold. First we don't know yet how strong these resistance will prove; and the analytics of constitutionalization we designed actually describes how states may indeed be overrun, in the long run. Moreover, our framework is consistent with very different actual processes of mobilization and constitutional change: we identified four generic scenarios that can be traced back to different social, economic and political environments, comparable to those which comparative, macro-historians have identified retrospectively, over the past centuries. In the future as in the past, constitutional outcomes will again respond to the balance between individual and collective action, ethical and

materialist concerns, elite-driven or mass-movement reforms, unique local conjunctures or slow moving tectonic changes, or between political blunder or strategic genius. But we are certainly able to envisage how these complex, utterly historical processes may emerge and unfold.

Another, wholly alternate scenario which we can't leave aside is that globalization would always open an unsustainable social, political hence economic order. The First globalization, in other words, would have set a general rule in so far as it eventually collapsed, politically and economically. Although they would always call for more individual autonomy and for more open exchanges, most actors would also refuse to yield the unique constitutional agreements they have designed, over the course of centuries - at least within some Liberal polities. The balance between global enfranchisement and local security would be unstable in the short run, as we have seen over the course of the 20<sup>th</sup> century, but hugely stable in the very long run. Cycle would rule, so that the main question would be whether great reversals would be peaceful or not.

Yet another scenario may also be envisaged, which would reflect the imperfect or unfulfilled constitutionalization processes of emerging countries. Though they now have working, and often rapidly-growing economies, together with democratic constitutions, their capacity extend constitutional guarantees to their population is still partial – thinks to the disenfranchised masses that still leave on the fringe of the modern liberal orders in India or Brazil. Moreover, the capacity of those states to deliver a large spectrum of public policies, or regulation is also limited. Hence a possible explanation for the failure of a global constitutionalization process: these countries, which represent the majority of the world population, can't participate, just because constitutionalization at the national level is not yet realised. Although citizens of the most-developed countries would be ready to merge their constitutional delegation contract, they would only represent a minority with the political capacity and resources to take such step.

## References

- Abbott, K. et Snidal D. [2000], "Hard Law and Soft Law in International Governance", *International Organization*, 54(3), pp. 421-456.
- Acemoglu D., Johnson S., Robinson J., 2004. Institutions as the Fundamental Cause of Long-term Growth. National Bureau of Economic Research, NBER Working Paper 10481.
- Acemoglu D., 2003. The Form of Property Rights: Oligarchic vs. Democratic Societies, NBER Working Paper n° 10037.
- Barnett, M., and M. Finnemore, *Rules for the World: International Organizations in Global Politics*, Ithaca, Cornell University press, 2004, 226 p.
- Barzel Y., 1989. *Economic Analysis of Property Rights*. Boston, Cambridge UP.
- Barzel, Y., *A Theory of the State*, New York, Cambridge University press, 2000.
- Börzel T. and Risse T. [2007], « Public-Private Partnerships: Effective and Legitimate Tools of Transnational Governance? », in Grande E. et Pauly L. W., *Complex Sovereignty: Reconstituting Political Authority in the Twenty-First Century*, University of Toronto Press, Toronto, p. 195-216.
- Boucher P. B., 1804. *Les principes du droit civil proprement dit, et du droit commercial, comparés*. Paris, chez Chaigneau, 401p.
- Brousseau, E., "Property Rights in the Digital Space", Cambridge University Press, 2008.
- Brousseau, Eric, and Emmanuel Raynaud, "Climbing the Hierarchical Ladders of Rules": the Dynamics of Institutional Framework", WP University of Paris X
- Brütsch C. and Lehmkuhl D. [2007], "Complex legalization and the many moves to law", pp. 9-32 in Brütsch C. et Lehmkuhl D. eds., *Law and Legalization in Transnational Relations*, London, Routledge, 244 p.
- Buchanan J. M., and Tullock G., 1962. *The Calculus of Consent, Logical Foundations of Constitutional Democracy*. Liberty Fund, 1999 edition, 356 p.
- Bull, Hedley (1977) *The Anarchical Society. A Study of Order in World Politics*. New York: Columbia University Press.
- Buzan, B. and R. Little (2000) [\*International systems in world history: remaking the study of international relations\*](#). Oxford: Oxford University Press.
- Buzan, B., *From international to world society ? : English school theory and the social structure of globalisation /* - Cambridge ; New York : Cambridge university press, cop. 2004. - 1 vol. (XVIII-294 p.)
- Caprio G., and Vittas D., eds.. 1997. *Reforming financial systems, Historical implications for policy*. Cambridge, World Bank/ Cambridge University Press, 222p.
- Carlos, M. A., and S. Nicholas, 1992. "Theory and History: Seventeen Century Joint-Stock Chartered Trading Companies", *Journal of Economic History*. 56, pp. 916-924.
- Checkel J., "Why Comply? Social Learning and European Identity Change," *International Organization*, Vol.55, No.3 (Summer 2001).
- Chiantini, M. 1996. *La Mercanzia di Siena nel Rinascimento, la normative dei secoli XIV-XVI*. Cantagalli, Siena, 268 P.
- Cooley, A., and J. Ron, "The NGO scramble: Organizational Insecurity and the Political Economy of Transnational Action", *International Security*, 27, 1, Summer 2002, pp. 5-39.

- De Soto, H., 2005. *Le mystère du capital, pourquoi le capitalisme triomphe en occident et échoue partout ailleurs ?* Paris, Flammarion (publié en anglais en 2000).
- Donahue C., 2004. The Empirical and Theoretical Underpinnings of the Law Merchant: Medieval and Early Modern Lex Mercatoria: An Attempt at the probatio diabolica. *Chicago Journal of International Law*, 5 (1). 21-38.
- Eberwein, W.D. and Y Schemeil, "If you can't beat them join them: Cooperation between Intergovernmental organizations", Istanbul, WISC, August 2005 [forthcoming in *Global Society* 2009].
- Elster J. and Slagstad R., 1988. *Constitutionalism and Democracy*, Cambridge, Cambridge University Press.
- Ferguson, Yale and Richard Mansbach (1996) *Politics: authority, identities, and change* Columbia, S.C: University of South Carolina Press.
- Ferguson, Y and R. Mansbach (2004a) *Remapping global politics: history's revenge and future shock*. Cambridge: Cambridge University Press.
- Ferguson, Y. and R. Mansbach (2004b) 'Historical perspectives on contemporary global politics: Promise and pitfalls', paper prepared for the british International Studies Association Annual Meeting, December.
- Finer, S. (1999) *The history of government from the earliest times*. Oxford: Oxford University Press
- Finnemore M. [1993], « International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy », *International Organization*, vol. 47, no. 4, p. 565-597.
- Finnemore M. et Sikkink K. [1998], « International Norm Dynamics and Political Change », *International Organization*, vol. 52, no. 4, p. 887-917.
- Friedrichs, Jörg (2001) "The Meaning of New Medievalism", *European Journal of International Relations*, 7, 4, 475-501.
- Geertz Cl., 1978. *The Bazaar Economy: Information and Search in Peasant Marketing*. The American Economic Review. Vol. 78, n° 2. May, pp. 23-32.
- Golding C., Libecap G., 1994. *The Regulated Economy, A Historical Approach to Political Economy*. Chicago, Chicago University Press, 230p.
- Goldstein, J., Kahler M., Keohane R.O. et Slaughter A.-M. [2000], "Introduction: Legalization and World Politics.", *International Organization*, 54, 3, Summer.
- Greif A., 1993. "Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition". *American Economic Review*. 83:3, pp. 525-48.
- Greif A., 1994. *On the Political Foundations of the Late Medieval Commercial Revolution: Genoa During the Twelfth and Thirteenth Centuries*. The Journal of Economic History. Vol. 54, n° 2. pp. 271-287.
- Greif A., 2002. Institutions and Impersonal Exchange : From Communal to Individual Responsibility, *The Journal of Institutionnal and Theoretical Economics*. 158-1.
- Haftendorn, H , and R. O. Keohane and C. A. Wallander, eds. *Imperfect unions: Security institutions over time and space*, Oxford ; New York : Oxford University Press, 1999. - xiv, 380 p.
- Keck, M. E., and K. Sikkink. *Activists beyond borders : advocacy networks in international politics*, Ithaca ; London : Cornell University Press, cop. 1998.
- Kelley J. [2004], « International Actors on the Domestic Scene: Membership

- Conditionality and Socialization by International Institutions », *International Organization*, vol. 58, no. 3, p. 425-458.
- Keohane R.O. Moravcsik A and Slaughter A.-M [2000], "Legalized Dispute Resolution: Interstate and Transnational", *International Organization*, 54, 3, Summer, pp. 457-488.
- Keohane, R. O., (1998). "International Institutions. Can Interdependence Work? ".
- Keohane, R. O., *After hegemony: cooperation and discord in the world political economy*. - Princeton : Princeton University Press, cop. 1984. - IX-290 p [2005 edition with a new preface (ix-xx)].
- Keohane, R. O., and L. L. Martin, "The Promise of Institutional Theory", *International Security*, 20, 1, Summer 1995, pp.39-51.
- Koremenos, Lipson, Snidal, "The rational design of international institutions.", *International Organization*, 55 (Autumn) 2001, pp. 761-799
- Krasner S. [1995, 1999] ed., *International Regimes*, Cornell University Press, Ithaca, London.
- Kuran T., 2006. The Absence of the Corporation in Islamic Law: Origins and Persistence. *The American Journal of Comparative Law*, 53 (4), pp? 783-834.
- Kuran T., 2004. Why the Middle-East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation. *The Journal of Economic Perspectives*, 18, (2). summer, pp. 71-90.
- Le stile de la jurisdiction royale établie dans la ville de Lyon*, 1657. Paris, chez Antoine Vité.
- Legnani A., 2005. *La giustiza dei mercanti, L'Universitas mercatorum, campsorum et artificum di Bologna e i suoi statuti del 1400*. Bologna, Bononia University Press, 295 p.
- Malyne, G. 1622. *Lex Mercatoria or the Ancient Law-Merchant*. London, by Adam Islif (1996 reprint by Methglin Press).
- Milgrom P., North D., Weingast B., 1990. The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges and the Champaign Fairs, *Economics and Politics*, 2-1, pp. 1-23.
- Mondré A and zangl B [2004], "Judicialization in International Security : A Theoretical Concept and some Preliminary Evidence", Bremen, *Transtate Working Paper* n° 27, 26 p.
- Moore, B., 1966. *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*. London, Beacon.
- North D., 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge, Cambridge UP.
- North D., and Weingast B., 1989. "Constitutions and Commitment: Evolution of Institutions Governing Public Choice", *Journal of Economic History*, 44, pp. 803-832.
- North, D. C., "Institutions", *Journal of Economic Perspectives*, 5,1, Winter 1991, pp. 97-112.
- North, D. C., (1990a) *Institutions, Institutional Change, and Economic Performance*, New York: Cambridge University Press.
- North, D. C., (1990b) "A Transactions Cost Theory of Politics" *Journal of Theoretical*



- Politics* 2 (4): 355-67.
- North, D. C., and R. P. Thomas, *The Rise of the Western World: A New Economic History*, Cambridge: Cambridge University Press(1973).
- North, D. C., J. J. Wallis, and B R. Weingast, *The Natural State: The Political-Economy Of Non-Development*, March 2005.
- North, D. C., *The Historical Evolution of Politics*", Saint Louis, Washington University, undated working paper.
- O'Rourke K.H., Williamson J.G., 1999. *Globalization and History, the Evolution of a Nineteenth Century Transatlantic Economy*, Cambridge, MIT Press, FFp.
- Oberthür, S. [2004] "Assessing the Design of Judicial Processes in International Relations: Compliance Mechanisms of International Environmental regimes", Paper prepared for *the Fifth Pan-European International Relations Conference*, The Hague, 9-11 September 2004, 31 p.
- Ostrom E., 1990. *Governing the Commons, the Evolution of Institutions for Collective Action*. Cambridge, Cambridge University Press.
- Padoa-Schioppa, A., (ed.). 1977. *Legislation and Justice, Origins Of The Modern State In Europe, 13th To 18th Centuries*. Oxford, Oxford University Press, 454 p.
- Piergiovanni V., (ed.). 1987. *The Courts and the Development of Commercial Law*. Duncker and Humblot, Berlin, 201 p.
- Polanyi K., 1944. *The Great Transformation: The Political and Economic Origins of our Time*. New York: Rinehart.
- Porter D., 1999. *Health, Civilization and the State, A history of public health from ancient to modern times*. London, Routledge, 376p.
- Reus-Smit, C., "The Constitutional Structure of International Society and the Nature of Fundamental Institutions" *International Organization*, Vol. 51, No. 4 (Autumn, 1997), pp. 555-589.
- Rosati, J. A., "The Power of Human Cognition in the Study of World Politics", *International Studies Review*, Vol. 2, No. 3 (Autumn, 2000), pp. 45-75.
- Rosenthal J.-L., 1998. *The Political Economy of Absolutism Reconsidered*. in : Bates et al., *Analytic Narratives*. Princeton, Princeton University Press, pp. 64-108.
- Ruggie, J.-G., « Multilateralism: Anatomy of an Institution », *International Organization*, vol. 46, n° 3, 1992, pp. 561-598.
- Ruggie, J.-G., *Constructing the world polity : Essays on international institutionalisation*, London ; New York (N.Y.): Routledge, 1998. - 1 vol. (XIII-312 p.)
- Ruggie, J.-G., *Multilateralism Matters: The Theory and Praxis of an International Form*, Columbia UP 1993.
- Santarelli U., 1964. *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia*. Cedam/ Antonio Milani, Padova.
- Savary, J., 1749. *Le parfait négociant*. 7<sup>th</sup> edition, Paris: Veuve Estienne, 2 vol., 1060 and 759p..
- Schemeil, Y., "Expertise and Political Competence: Consensus Making within the World Trade and the World Meteorological Organizations", p. 77-89, in Reinalda (B.), Verbeek (B.), *Decision-Making Within International organizations*, London, Routledge, 2004.
- Schemeil, Y., 2008a, *From Mutual Denegation to Mutual Recognition: The Legitimacy and*

- Efficiency Trade off between NGOs and IGOs (WTO, IAEA)*, San Francisco, International Studies Association, 25-28 April 2008.
- Schemeil, Y., 2008b, « Global Governance of the Information System Revisited: Innovation or Evolution in International Politics? », chapter 1, in E. Brousseau, M. Marzouki & C. Meadel, eds., *Governance, Regulations and Powers on the Internet*, Cambridge University Press, 2008.
- Schemeil, Y., and W.-D. Eberwein, eds., « Le mystère de l'énonciation : normes et normalité en relations internationales », introductory chapter to *Normer le monde*, Paris, L'Harmattan, Fall 2008
- Schroeder, P. W. (2004) *Systems, Stability, and Statecraft: Essays on the international History of modern Europe*. New York: Palgrave & Macmillan.
- Shapiro M., 1981. *Courts, A Comparative and Political Analysis*. Chicago, The University of Chicago Press.
- Simmons B. [2000]. "The Legalization of International Monetary Affairs." *International Organization* 54, no. 3 (Summer 2000), pp. 573-602.
- Skinner Q., and Strath B. 2003. *States and Citizens, History, Theory, Prospect*. Cambridge, Cambridge University Press, 235p.
- Skocpol T. 1979. *States and Social Revolutions: A Comparative Analysis of France, Russia, and China*, New York, Cambridge University Press, 1979.
- Taylor, P., *International Organization in the Modern World, The Regional and the Global Process*, London, Pinter-New York St Martin'Press, 1993, 262 p.
- Tilly, Ch., 1990. *Coercion, Capital and European States, AD 990-1900*. London, Blackwell.
- Timberg T. A., Aiyar C. V., 1984. Informal Credit Market in India. *Economic Development and Cultural Change*. vol. 33, n°1, octobre, pp. 43-59.
- Tin-bor Hui, V. (2004) 'Toward a dynamic theory of international politics: insights from comparing Ancient China and Early Modern Europe', *International Organization*, 58 (1): 175-205.
- Weber, M., 1921/1968. *Economy and Society*. Berkeley, University of California Press, edited by G. Roth and C. Wittich
- Williamson O.E., "The Economics of Governance," *American Economic Review*, 2005.
- Williamson O.E., *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*. New York: The Free Press, 1985.
- Williamson, O.E., 1996. *The Mechanisms of Governance*, Oxford, Oxford UP.