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# What Is a Classical Liberal Constitution?

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JOHN A. DOVE AND ANDREW T. YOUNG

**C**lassical liberalism is a belief system that links prosperity, both material and immaterial, to respect for the individual. Such respect is embodied in rights to one's own self and property, safeguarded under the rule of law. Classical liberals favor an institutional environment of economic freedom, "[t]he cornerstones of [which] are personal choice, voluntary exchange, open markets, and clearly defined and enforced property rights" (Gwartney et al. 2019, 1). There is considerable evidence that links this sort of institutional environment to prosperity (Hall and Lawson 2014).

Further, a society's institutional environment is a set of political outcomes. Those outcomes take shape within a higher-order framework of constraints and prescriptions—call it the *metainstitutional environment*, or a society's *constitution*. All else equal, different constitutions will yield different outcomes at the level of ordinary politics: some will tend to yield economic freedom, and it stands to reason that classical liberals would favor these constitutions. However, what does a classical liberal constitution look like?

Richard Epstein notes that foundational to classical liberalism are the "twin pillars of private property and limited government" (2014, ix). The latter must have sufficient capacity to define and enforce the former but also restraint in not employing it toward predation that erodes those rights (e.g., Buchanan 1975; Weingast 1993, 1995; Acemoglu and Robinson 2019). What sort of framework of prescriptions and

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constraints will strike this balance, empowering a state’s protective Jekyll while shackling its predatory Hyde? This question is of paramount importance for classical liberals. However, although scholars of that bent have devoted great effort to exploring the relationships between ordinary-level institutions and prosperity—citations to many of them are, again, to be found in Hall and Lawson 2014—they have produced next to nothing regarding the links between constitutional-level institutions and prosperity.

In this paper, we aim to highlight the scholarly neglect of the constitutional level by classical liberals. This may strike many readers as misguided, especially if they have a preconceived notion of what a classical liberal constitution looks like. (Perhaps the U.S. Constitution comes to mind?) However, there is actually very little evidence—either compelling or merely suggestive—about which aspects of constitutional design are associated with economic freedom and limited government. This is troubling. As Aziz Huq puts it, “Structural aspects . . . are not valued for their own sake. . . . Second-order constitutional design instead succeeds only if it creates desirable first-order goods” (2014, 1006). Secure property rights and rule of law—these are relevant first-order goods. Yet there is scant evidence as to the sorts of constitutional design that yield them up. In an empirical illustration, we demonstrate that certain aspects of constitutional design, favored by classical liberals, are not at all clearly linked to greater economic freedom.

Before we proceed further, we should note that we are concerned here with neglect of *de jure* constitutional design. A distinction can be drawn between *de jure* (formal, codified) constitutions and those that are purely *de facto* (informal, based on unwritten conventions and norms).<sup>1</sup> This distinction is worth noting because some scholars are dismissive of what James Madison referred to as mere “parchment barriers.”<sup>2</sup> Nikolai Wenzel, for example, is very clear on this: “I emphatically reject the notion that good constitutional parchment is sufficient for successful constitutionalism” (2010, 65). Alexander Salter and Glenn Furton echo and elaborate on the point: “A written constitution can specify which set of rules, from a much larger set of feasible rules, will operate. . . . But this is very different than the intended, and broadly agreed-upon, utility of *de jure* constitutions, which is as mechanisms for binding or constraining. *De jure* constitutions cannot perform this role” (2018, 38). Although these authors do not outright reject the relevance of *de jure* constitutions, they clearly perceive them to be of second-order importance.

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1. It is more accurate to speak of *de jure* constitutional elements versus those that are purely *de facto*. The comprehensive constitution of any society includes both types. On the one hand, the United States is an example of a country that has a single codified document that is binding on political agents in many contexts; on the other hand, unwritten conventions and norms are also constitutional (e.g., see Amar 2012). The medieval constitution of western Europe was almost entirely based on unwritten conventions and norms, though certain aspects ended up codified in charters of immunities and rights (e.g., the Magna Carta) (Young 2020).

2. Madison himself obviously spent considerable effort on drafting and gathering support for his own fledgling country’s parchment barrier.

However, the rise of the de jure constitution and its near ubiquity today are undeniable. Since the adoption of the U.S. Constitution in 1789, 95 percent of states adopted a constitution within five years of coming into existence (Elkins, Ginsburg, and Melton 2009, 42). Untold resources have been devoted to the drafting and subsequent amending of these documents. It is also fair to say that most people in almost all countries believe that de jure constitutions are—or at least can be—of great importance. Among scholars, “[e]very serious student of the topic recognizes, indeed insists, that each nation, especially each emerging nation, should adopt a written constitution to shape the organization of its government” (Epstein 2011, 290).

And there are good reasons to believe that de jure constitutions *are*—or, again, at least can be—of great importance. They can serve as coordination devices (e.g., Hardin 1989; Ordeshook 1992; Weingast 1997; Hadfield and Weingast 2014). By codifying feasible rules, they can provide “a focal solution ... so that citizens gain the ability to act in concert and police their government” (Weingast 2005, 105). Just as importantly, such a focal solution can provide political agents with means by which to police one another (Young 2020). Until those feasible rules are codified, they are merely conventions and norms—shared beliefs regarding permissible behavior. The extent to which those shared beliefs are actually binding is determined only by *the extent to which they are shared*. Codification, in contrast, provides citizens and political agents with a common reference point.<sup>3</sup>

Furthermore, de jure constitutions can determine *which* feasible rules are coordinated on. As Salter and Furton note, they can “specify which set of rules, from a much larger set of feasible rules, will operate” (2015, 38).<sup>4</sup> But that seems to be critically important because only the (smaller) set of feasible rules will actually operate—that is, help to determine the practices and patterns of governance. Constitutional designers, then, play a role in determining whether the operative set is a “good” one or a “bad” one.

So, again, what does a classical liberal constitution look like? In using this terminology—including in the paper’s title, no less—we are making an obvious reference to Richard Epstein’s masterful book *The Classical Liberal Constitution* (2014). However, Epstein’s book is concerned largely with the U.S. Constitution in relation to the Founding Fathers’ ideological backdrop of classical liberalism. Epstein is not

3. This insight is implied in U.S. chief justice John Marshall’s opinion in *Marbury v. Madison* (5 U.S. 137 [1803]): “[T]he powers of the legislature are defined and limited; *and that those limits may not be mistaken, or forgotten, the constitution is written*” (emphasis added). The role of de jure constitutions as coordinating devices is complementary to F. A. Hayek’s view of their role: “[A] constitution is essentially a superstructure erected to serve the enforcement of existing conceptions of justice but not to articulate them: it presupposes the existence of a system of rules of just conduct and merely provides a machinery for their regular enforcement” (1979, 38).

4. According to Stefan Voigt, “[T]he emergence of constitutions can be better understood, if one conceptualizes them as being based on spontaneously arisen institutions... [A de jure] constitution will only constrain politicians effectively, if it is *compatible with* a subset of these spontaneously arisen institutions” (1999, 284). And Richard Hardin writes: “[I]n formally adopting a constitution, we can agree to coordinate one way rather than another” (1989, 115).

specifically concerned with the structural elements of constitutional design and their relationships to classical liberalism. Alternatively, the lack of scholarship exploring those relationships is of primary concern here.<sup>5</sup>

In the next section, we review the few empirical studies of constitutional design in relation to a classical liberal institutional environment. The rest of the paper is devoted to arguing that this paucity of applied study should be addressed. To do so, we begin in the second section by overviewing an ongoing debate regarding two alternative models of constitutional design: the *entrenched/spare* one versus the *unentrenched/detailed* one. These models focus narrowly on two broad dimensions of constitutional design. We concentrate on them as a specific illustration because classical liberals have a preference for the former but without empirical support to back up that preference. In the third section, then, we describe the wealth of data available from the Comparative Constitutions Project (Elkins, Ginsburg, and Melton 2009). These data can provide invaluable insights into what a classical liberal constitution might look like. We employ the project data to take a preliminary look at whether entrenched/spare constitutions are associated with a classical liberal environment. The results are decidedly mixed, which should be a clarion call for systematic and serious study of the data, which we argue for in our concluding discussion.

### (The Few) Existing Studies

The most straightforward studies of constitutional design in relation to an institutional environment of economic freedom are papers by Zane Spindler and Xavier de Vanssay (2002); de Vanssay, Vincent Hildebrand, and Spindler (2005); and Ram Mudambi, Pietro Navarra, and Christ Paul (2002). All of these studies focus on the Fraser Institute's Economic Freedom of the World (EFW) index, which can be interpreted as a measure of classical liberal institutions.

Spindler and de Vanssay (2002) explore the relationship between economic freedom and whether a country's constitution provides for (1) a federalist structure and/or (2) a bicameral legislature. They estimate cross-sectional OLS regressions with EFW index values as the dependent variable, finding that when the lagged value of EFW is controlled for, only the bicameral legislature value enters significantly. In

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5. We have framed our discussion in terms of what type of constitution leads to greater economic freedom. We believe that it is reasonable to characterize classical liberals as *generally* favoring economic freedom. That being said, many scholars comfortably identify as both classical liberal and contractarian. They may not perceive anything classically *illiberal* about restrictions on economic freedom per se, provided the restrictions are consistent with a generality norm (Buchanan and Congleton [1998] 2003; Congleton 2004). For instance, James Buchanan favored a 100 percent marginal inheritance tax "over a relatively modest amount" (Henderson 2013, 162; see also Brennan 2013). Niclas Berggren recounts "Buchanan say[ing] that he thought people *in general* shared a dislike of inherited wealth" (2013, 297, emphasis added). For Buchanan, a confiscatory tax could be classically liberal provided it had widespread support. See Randall Holcombe's insightful analysis of Buchanan as "a self-described classical liberal" whose contractarianism placed him "in a camp different from many libertarian thinkers, who see clear limits to the legitimate role of government" (2014, 364); see also Berggren 2013 along similar lines.

that case, it enters positively, *but* the point estimate of the coefficient is very small (less than 0.5, whereas the EFW index runs from 0 to 10 with a standard deviation of about 1.7). De Vanssay, Hildebrand, and Spindler (2005) then consider panel EFW regressions that include a mix of *de jure* and *de facto* constitutional factors from the Database of Political Institutions (DPI) (Beck et al. 2001; Keefer and Stasavage 2003). Among the former, in cross-sectional and panel EFW only dummy variables for a finite executive term and a parliamentary system enter significantly (though not the latter when Organization for Economic Cooperation and Development countries are excluded). The point estimate on the latter is again fairly small (around 0.4); more importantly, despite what is reported in Spindler and de Vanssay (2002), none of the regressions controls for the lagged value of EFW.

Mudambi, Navarra, and Paul (2002) focus on a sample limited to a cross-section of only twenty-nine emerging market economies. They include a parliamentary (versus presidential) system dummy variable. This dummy variable does not enter significantly when controlling for two other constitutional factors: whether there is proportional or plurality representation and the number of districts from which representation is drawn. However, Mudambi, Navarra, and Paul's study and its results are *prima facie* problematic for a couple of reasons. First, the number of districts is entered without accounting for the size (area or population) of the country considered. Furthermore, when changes in EFW for 1990–1995 are analyzed, the point estimates reported on proportional representation are simply implausible (around 44, where, again, the EFW index runs only from 0 to 10).

Particularly relevant to the entrenched/spare versus unentrenched/specific models we discuss, a recent paper (Callais and Young 2020a) employs matching methods to explore whether the adoption of a more entrenched constitution—that is, one procedurally more difficult to amend—leads to greater or lesser economic freedom. This is the only serious attempt, to our knowledge, to identify a causal link between entrenchment and economic freedom, and the study finds no statistically significant relationship based on the data.

A number of papers also estimate the relationship between EFW and the widely used Polity IV (Marshall, Gurr, and Jaggers 2019) democracy measure (Sheehan and Young 2015; Kotschy and Sunde 2017; O'Reily and Murphy 2017; Murphy 2020); the Polity measure, along with the DPI “checks” measure of veto players (Hall 2016); and the binary measure (Cheibub, Gandhi, and Vreeland 2010) of democracy versus dictatorship (DD) (Rode and Revuelta 2015). The results of these studies are mixed. More importantly, the Polity, checks, and DD measures synthesize *de jure* and *de facto* constitutional factors; they also conflate constitutional factors with political outcomes.<sup>6</sup> As such, these studies do not clearly address *de jure* constitutional design

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6. For example, Polity IV makes adjustments based on subjective judgments concerning the extent of political polarization; similarly, the DPI “checks” measure is based on whether different political parties control the executive or legislative branch.

in relation to a classical liberal institutional environment.<sup>7</sup> This is similarly the case for studies that have modeled Freedom House’s political rights and civil liberties measures as determinants of economic freedom (Dawson 1998, 2003; Vega-Gordillo and Álvarez-Arce 2003; Lundström 2005; Aixalá and Fabro 2009; Lawson and Clark 2010).

## An Entrenched/Spare Constitution as a Classical Liberal Constitution?

To summarize the previous section, only a handful of empirical studies have addressed what a classical liberal constitution might look like. Furthermore, studies within that handful are problematic. As such, it is fair to say that we know very little about what a classical liberal constitution looks like in the real world.

In this section, we lay out an illustrative example of two broad, alternative models of constitutional design. Scholars tend to have strong, contrasting priors regarding these models’ relative merits. Specifically, we consider the *entrenched/spare model* of constitutional design and, alternatively, the *unentrenched/specific model* (Versteeg and Zackin 2016). These models have received considerable attention in political science and constitutional law, but less so in economics and very little in terms of empirical analysis. We define these models in terms of only two broad dimensions of constitutional design. Although we do not aim to discount other dimensions, considering these two dimensions in each of the two models is a useful illustration because classical liberals generally favor the entrenched/spare model as conducive to limited government and economic freedom. (We elaborate later on *why* they do so.)

The entrenched/spare model is based on the belief that good governance will arise within a framework of a relatively small number of both broad and rigid constraints on political agents. Alternatively, the unentrenched/specific model envisions a citizenry that undertakes “ongoing constitutional micromanagement” via a large number of specific provisions that are subject to frequent revision (Versteeg and Zackin 2016, 660).

Both models of constitutional design offer solutions to the same class of principal-agent problems (Versteeg and Zackin 2016, 658). The incentives of the governed and the incentives of their political agents can often be misaligned; as a result, gov-

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7. Robert Lawson, Ryan Murphy, and Benjamin Powell (2020) provide a comprehensive survey of papers that have explored the determinants of economic freedom as measured by the EFW index. It should be noted that numerous studies look at dimensions of de jure constitutional design in relation to various economic outcomes (e.g., per capita income) as well as government efficiency and corruption levels. Voigt (2011) provides a comprehensive survey up to 2011. More recent studies link constitutional length to higher corruption rates and lower incomes (Montenegro 1995; Tsebelis and Nardi 2016; Tsebelis 2017). We find (Dove and Young 2019) that for U.S. states in the nineteenth century shorter and more entrenched constitutions were associated with lower probability of government default; alternatively, Callais and Young (2020b) fail to find any relationship between entrenchment and economic performance in cross-sectional, time-series country data.

ernance may be inept or outright predatory. The solution offered by the entrenched/sparse model is to place strict constraints on those agents. Given the role of constitutions as coordination devices, a small number of broad constraints will be most effective. A large number of very detailed provisions is unlikely to provide an effective focal point. Given basic cognitive, time, and other constraints, an effective focal point for citizens is almost necessarily a sparse framework.<sup>8</sup> Furthermore, the more specific the constitutional provisions are, the more likely they will quickly become obsolete and need revisiting over time (Graves 1967; Lutz 2006; Tsebelis and Nardi 2016). A framework in flux will be a less-effective focal point than a stable one.

Entrenchment also serves as a barrier to agents amending those constraints in ways that are self-serving (Buchanan and Tullock 1962; Persson, Roland, and Tabellini 1997; Aghion and Bolton 2003; Ginsburg and Posner 2010). Because a constitution provides the framework within which ordinary politics will play out over time, the external costs associated with amending it are expected to be high (Buchanan and Tullock 1962). Entrenchment works to ensure that such amendments are consistent with a generality norm, thus preventing constitutional capture that will serve to enrich special interests rather than the citizens broadly (Buchanan and Congleton [1998] 2003; Congleton 2004).<sup>9</sup>

Alternatively, the unentrenched/specific model is an attempt to solve agency problems by providing the governed with access to their agents' "ongoing constitutional micromanagement" (Versteeg and Zackin 2016, 658). The governed can be very detailed and specific in prescribing tasks to their political agents and constraining them from certain behaviors. Furthermore, the governed can frequently revisit those prescriptions and constraints whenever they prove ineffective and/or conditions of the governance environment change.

Classical liberal scholars have generally favored the entrenched/sparse model. This is the "short, framework-oriented constitution" that James Madison advocated (Hammons 1999). As Stephen Holmes notes, "A liberal constitution may be minimally defined as a 'higher law' that cannot be changed through normal lawmaking procedures in the popularly elected assembly" (1995, 134). Because this "higher law" is composed of a spare framework of durable provisions, it embodies credible commitments to time-consistent patterns of governance (Elster 1979; Holmes 1995; Tsebelis 2017). This configuration provides the foundation for limited government

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8. For example, the median U.S. citizen's knowledge of the broad contours of the Bill of Rights is in all likelihood *much* more complete than his or her knowledge of either the federal tax code or regulatory code. Peter Ordeshook's first "universal rule of constitutional design" is: "*Constitutional provisions ought to be simple and concise, unencumbered by legalistic complexity*" (2002, 11, emphasis added). He draws an analogy to "social norms and customs [which are] effective if and only if they are simple and readily understood by nearly everyone" (11).

9. This is another reason to expect that the entrenched and spare dimensions tend to be correlated with one another. Broad constitutional prescriptions are more likely to embody general interests and, therefore, to garner broad support from the citizenry than very detailed, specific ones (which are more likely to be tailored to special interests).



under the rule of law.<sup>10</sup> Furthermore, constitutional design should avoid “cluttering up the constitution with provisions which are more properly the province of regular legislation” (Lutz 1982, 37).

However, we do not have a lot of empirical evidence to confirm or deny theoretical notions of how the choice of an entrenched/spare (rather than an unentrenched/specific) constitution links up with a society’s institutional environment. Scholars are often content to fall back explicitly or implicitly on the U.S. experience (Hammons 1999; Versteeg and Zackin 2014). (The U.S. Constitution is widely noted for its brevity, durability, and emphasis on negative rights as opposed to positive entitlements.) If we look beyond that experience, however, there are some *prima facie* reasons to doubt a clear link between the entrenched/spare model and classical liberal institutions.

We know that economic freedom has been increasing on average worldwide since 1980 (Gwartney et al. 2019, 15–16). During that time, the average length of national constitutions has increased from around 15,000 words to more than 20,000 words (Versteeg and Zackin 2014). These contrasting trends call into question the entrenched/spare constitution as a classical liberal one. Alternatively, over the same time period, constitutions increasingly have more onerous barriers to amendment (e.g., requirements for legislative supermajorities and/or citizen referenda). In and of itself, this trend might be perceived as consistent with an entrenched/spare constitution as classically liberal. However, at the same time, actual amendment rates have, on average, been increasing worldwide (Ginsburg and Melton 2015, 690). This increase suggests that as economic freedom has been increasing, constitutions have been becoming less entrenched *de facto*.<sup>11</sup>

## Comparative Constitutions Project Data

*What is a classical liberal constitution?* Everything in this paper up to this point has been written to convince the reader that we do not have the answer to this question. And we will not have any confidence in an answer without seriously considering the available data. Using again the illustrative example of the entrenched/spare model versus the unentrenched/specific model of constitutional design, in this section we argue that (1) the available data are rich enough to yield credible insights but (2) a look at simple correlations does not obtain them, so systematic analysis and plausible identification strategies will be needed. These correlations are the results of regression analyses that we report in the appendix to this paper.

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10. In a liberal democracy, this sort of constitution also encourages patterns of governance based on rational deliberation rather than on knee-jerk, *heat-of-the-political-moment* decision making (Holmes 1995; Hayek 1960): “A constitution is Peter sober while the electorate is Peter drunk” (Holmes 1995, 135).

11. The amendment rate is the observed number of years in which a constitution is amended divided by the total number of years that the constitution has existed.

A wealth of data on constitutional design is available to researchers. Much of these data come from the Comparative Constitutions Project (CCP). Launched in 2005, the CCP is a nonprofit organization that provides data based on what is nearly the universe of constitutional texts promulgated since the U.S. Constitution of 1787–88. The CCP is directed by Zachary Elkins, Tom Ginsburg, and James Melton, and its data were initially described and analyzed in their book *The Endurance of National Constitutions* (2009). Particularly relevant to the present discussion, the CCP data provide useful metrics for measuring the dimensions of the entrenched/sparse and unentrenched/specific models of constitutional design.

Entrenchment can be considered in two senses. First, it can be considered as an outcome—what we call “de facto entrenchment”: Were constitutional arrangements more or less durable over some time period? A straightforward inverse metric for de facto entrenchment is a constitution’s *amendment rate*. Ginsburg and Melton (2015) provide this variable based on the CCP data. For each year that a constitution exists, a value of 1 is coded if one or more amendments occurred; otherwise, a value of 0 is coded. The amendment rate is the sum of those values divided by the total number of years the constitution has existed. A lower or higher amendment rate evidences a constitution that was ultimately more or less durable—more or less de facto entrenched—over the time period considered.

De facto entrenchment speaks to whether a constitution is providing predictable rules of the game and embodied credible commitments as well as whether it is serving as a stable focal point or not. However, de facto entrenchment reflects more than just constitutional design. With constitutional design held constant, a constitution’s amendment rate will also be a function of changes in the political and economic environment. (In economic terms, constitutional design dictates the supply—or cost schedule—of amendments, while changes in the political and economic environment help to determine the demand for amendment at any point in time. The empirical amendment rate will be an equilibrium outcome of the interplay of supply and demand.)

We can, instead, then consider *procedural* entrenchment—that is, the extent to which constitutional design makes amendment more or less costly.<sup>12</sup> We consider four dimensions of procedural entrenchment from the CCP data: (1) the *threshold* for approving constitutional amendments (with coded values of 0.50, 0.60, 0.67, and 0.75), (2) the number of actors who can *propose* amendments, (3) the number of actors whose *approval* of the amendment is required, and (4) the required number of

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12. Constitutional design can almost certainly make amendment more costly, but that is not to say that constitutional designers can achieve whatever level of costliness they desire. As Daryl Levinson notes, “Formal [i.e., procedural] constitutional entrenchment is not sufficient to create functional entrenchment because formal, legal barriers may be ignored, opportunistically revised, or overridden [*sic*]” (2011, 698). See Richard Albert for an endorsement of *formal* amendment of the U.S. Constitution in violation of Article V, action that he argues is under certain circumstances “illegal yet legitimate” (2020, 859).

legislative *sessions* for the approval process. These variables are described in Ginsburg and Melton 2015.<sup>13</sup>

Regarding the spare-versus-specific dimension of constitutional design, we consider a measure of *specificity* from the CCP data: the total number of words in a constitution. The CCP uses English-language translations of constitutions not originally drafted in English. The straightforward assumption here is that a longer constitution addresses more topics and in greater detail than a shorter one does.

Finally, in the estimations that we report in the appendix, we include a measure of constitutional longevity. This is an inverse measure and is simply the sum total of constitutions a country had between 2005 and 2014. Whereas a measure of de facto entrenchment speaks to whether the form of a given constitution endures over time, constitutional longevity takes into account whether a society tends to replace its entire constitution more or less frequently. It thus indicates a different sense of durability in constitutional arrangements.

In the appendix, we report regressions for a ten-year period (2005–14) of the Fraser Institute’s EFW scores on the specificity, (de facto and procedural) entrenchment, and constitutional longevity variables described earlier. Our sample consists of 159 countries. We consider the comprehensive EFW index and also, separately, its five component subindices: (1) *size of government*, (2) *legal system and property rights*, (3) *sound money*, (4) *freedom to trade internationally*, and (5) *regulation*. The regressions are cross-sectional, where each variable enters as an average over the period 2005–14. Results are reported when including only the constitutional variables as regressors (table A2) and when also including a set of additional controls (table A3).<sup>14</sup>

If overall economic freedom is focused on, without additional controls, greater specificity does seem to be significantly related to less freedom. This finding is consistent with the argument that a short, framework-oriented constitution is a classical

13. Various authors have introduced unitary measures of procedural entrenchment (Lutz 1994; Liphardt 1999; La Porta et al. 2004; Lorenz 2005; Rasch and Congleton 2006; Anckar and Karvonen 2015; Ginsburg and Melton 2015). A stylized fact from this literature is that procedural entrenchment, however measured, does not seem to have a strong correlation with de facto entrenchment. Elaborating on a recent example, Ginsburg and Melton regress amendment rates on a set of eighteen variables that code amendment procedures as well as on additional controls considered to be predictors of political reform generally (2015, 695). The rigidity measure is then a linear function of procedural variables weighted by their corresponding regression coefficients. (Their approach is similar to that of Donald Lutz [1994], who codes procedures for U.S. state-level constitutions.) There are trade-offs involved in choosing a unitary measure of procedural entrenchment. On the plus side, a unitary measure allows a researcher to employ causal-inference methods where he or she needs to clearly define a “treatment” (e.g., Callais and Young 2020a, 2020b). On the negative side, results will be sensitive to the choice of weights; also, the use of ex post amendment rates to estimate the weights raises endogeneity concerns (something acknowledged in Ginsburg and Melton 2015, 696).

14. These additional controls are dummy variables that take the value of 1 for federalist systems (from the Quality of Government Institute), the urbanization rate (from the World Development Indicators), a human capital index, investment and export shares of gross domestic product (GDP), and per capita GDP (all from the Penn World table 9.1 in Feenstra, Inklaar, and Timmer 2015). These variables are often found as controls in empirical studies of economic freedom (Lawson, Murphy, and Powell [2020]). Summary statistics are reported in table A1.

liberal one. However, when we include additional controls, the estimate on specificity is essentially zero and insignificant. Perhaps more disconcerting are the results associated with procedural entrenchment. Without additional controls, the number of proposers and the threshold for approval variables enter both negatively and significantly; the former remains a negative and significant correlate when additional controls are included.<sup>15</sup> Alternatively, in that case, the variable of the number of sessions required for amendment enters positively and significantly. Overall, there is no clear picture regarding what sort of constitutional design is associated with greater economic freedom.

Although not reflecting on constitutional design per se, we can also consider the estimates on the de facto durability variables. On the one hand, constitutional longevity (which enters inversely, measured by the number of constitutions from 2005 to 2014) appears to be positively and significantly related to economic freedom. On the other hand, de facto entrenchment (which also enters inversely, measured by the amendment rate) is negatively and significantly related to freedom. Should a classical liberal favor a durable constitutional framework? This is unclear. It is also worth noting that the estimated correlations suggest small effects. When the largest estimated coefficient in each case is used, the associated change in economic freedom (which has a sample mean and standard deviation, respectively, of about 6.8 and 0.9) is less than 0.25 in absolute value. A straightforward consideration of the data does not point to a clear yes or no answer.

The reader can peruse the appendix for the results of our study based on the individual areas of economic freedom, so we make only two general observations here. For most of those areas, the picture that emerges is similar to the picture that forms when the overall freedom measure is considered. In particular, it is not at all clear that a short, framework-oriented constitution serves to promote economic freedom. Second, it has long been recognized that government size (variable 2 in table A2) is negatively correlated with the other areas of economic freedom in cross-country data (e.g., Ott 2016).<sup>16</sup> With this in mind, it is perhaps not surprising that this is

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15. Considering that case, the sample standard deviation for amendment proposers is 1.20; taking the average of coefficient estimates across tables A2 and A3 (about 0.11) implies that a standard deviation in that constitutional design variable is associated with about a 0.13-point increase in economic freedom (a variable with a standard deviation of about 0.9). To the extent we would take the estimated effect seriously, it is very small.

16. When conducting empirical analyses on the individual EFW areas, one tends to be reminded of the stylized fact that rich countries are generally characterized by *large* governments that provide for well-defined and enforced property rights under rule of law (Johnson and Koyama 2017). The idea of limited government is often conceived of in terms of both government size and scope. However, only in the sense of the latter do modern liberal (and rich) democracies appear to have limited government. Interpreting large governments in terms of high state capacity raises interesting questions regarding the relationship between that capacity and economic freedom. The conventional view is that they are complementary: a state constrained to respect economic freedom can focus on protective and productive governance; regarding the latter, the provision of common-interest public goods enhances the productivity of individuals enjoying economic freedom. However, see Murphy and O'Reilly 2020 for a country-level panel data analysis suggesting that state capacity and economic freedom are more substitutable than complementary.

the only area positively correlated with constitutional specificity (though, again, this result is not significant when additional controls are included).<sup>17</sup>

None of the results found in the appendix is based on satisfactory research design. Our point, rather, is to illustrate that classical liberal endorsement of a short, framework-oriented, and entrenched constitution does not receive solid *prima facie* support from the data. The reader may react: *Such a cursory look at the data cannot tell us what is and is not a classical liberal constitution! We reply: Yes, you're right! Classical liberal scholars need to take a more serious and systematic look at the data.* Understanding what a classical liberal constitution is—if it exists—requires careful empirical research based on thoughtful identification strategies. We hope to motivate this sort of research moving forward.

## Concluding Discussion

Classical liberalism and constitutionalism are considered to be quite comfortable bedfellows. In particular, classical liberals generally favor short, framework-oriented constitutions that entrench the rules of the game within which ordinary politics plays out—the Madisonian approach to constitutional design. Mila Versteeg and Emily Zackin (2016) have provided this model for constitutional design with the useful label *entrenched/spare*.

But a constitution is not valued for its own sake. The proof of the constitutional pudding is in the ordinary politics that we end up eating (like it or not). When ordinary politics plays out within an entrenched/spare constitutional framework, is the result limited government and an institutional environment of economic freedom? Empirically, the existing evidence with which to answer this question is definitely slim and truly close to none. This is true not only in regard to the entrenched/spare model specifically but also in regard to constitutional design generally. *What is a classical liberal constitution? We simply do not know.*

And we do not know because we have not made an applied study of the matter. Using the entrenched/spare model as an illustrative example, we have argued that the data to pursue such applied study are readily available. The Comparative Constitutions Project codes a wealth of data on the dimensions of constitutional design. Employing those data, we have then demonstrated that there is no clear correspondence between entrenched/spare constitutions and economic freedom. In particular, there is no clear positive relationship between the entrenchment of constitutional provisions and economic freedom. Indeed, requiring large supermajority thresholds

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17. Interestingly, the federalist system dummy (which equals 1 for federalist) enters all estimations negatively and is significant for overall economic freedom and the freedom to trade internationally. In an early paper (based on an early version of the EFW index), Robert Lawson and Walter Block (1996) find no relationship between fiscal decentralization and economic freedom in cross-country data. Using panel data, Aurélie Cassette and Sonia Paty (2010) find that such decentralization leads to smaller central-government size but larger expenditures by subnational governments. Like the measures of constitutional design that we focus on, the relationship between federalism and economic freedom is unclear.

for amendment—perhaps the hallmark of entrenchment—appears to correlate negatively with such freedom.

To be clear, we make no claims to identification of causation. Admittedly, our regressions are based on naive specifications; the reported conditional correlations are at best suggestive. Yet they *are* suggestive, and, moreover, the results are surprising in ways that should be frustrating to classical liberals. The results should highlight the fact that classical liberal views on constitutionalism and constitutional design have simply not been subjected to analysis through the available data. This should not continue to be the case. A wealth of empirical evidence illustrates that economic freedom leads to economic growth and greater well-being (Hall and Lawson 2014). If we are going to take constitutionalism seriously, it is high time we seek some evidence of what sort of constitutional design gets us that economic freedom.

Of course, it could be that de jure constitutions just do not matter for liberty. Some classical liberal scholars—including some referenced throughout this paper—have indeed discounted or outright dismissed the relevance of de jure constitutions. Fair enough. But there is sizeable evidence that such constitutions *do* matter for a range of real-world outcomes, many of them undeniably important. (See the literature reviewed in Voigt 2011 and also some of the individual studies cited earlier.) For the institutional outcomes that classical liberals hold dear, it is certainly worth their while—and specifically their scholarly efforts—to see whether the same does or does not hold true.

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## Appendix: Summary Statistics and Regressions

**Table A1**  
**Summary Statistics**

Variable	Observations (N)	Mean	Std. Dev.	Min.	Max.
EFW (Economic Freedom)	159	6.77	0.88	3.89	8.99
Size of Government	159	6.51	1.07	3.68	8.73
Legal System and Property Rights	159	5.29	1.57	2.28	8.93
Sound Money	159	8.03	1.32	2.97	9.76
Freedom to Trade Internationally	159	7.04	1.04	3.87	9.44
Regulation	159	6.99	0.95	4.30	9.32
De Facto Entrenchment (inverse)	159	0.19	0.20	0.00	0.94
Specificity	159	20,591.19	15,260.61	2,826.00	71,800.00
Threshold	159	0.61	0.08	0.50	0.75
Propose	153	1.95	1.20	0.00	5.00
Approval	153	1.83	0.86	0.00	4.00
Sessions	154	0.24	0.42	0.00	1.00
Total Constitutions	159	1.21	0.57	1.00	4.00
Federalism (1 = Yes)	159	0.014	0.34	0.00	1.00
% Urban	133	60.59	22.69	10.54	100.00
Human Capital Index	113	2.56	0.66	1.15	3.66
Investment share of GDP	117	0.23	0.07	0.05	0.41
Export share of GDP	117	0.32	0.29	0.02	1.86
Per Capita GDP (in Thousands of \$)	117	18.22	17.25	0.62	80.87

**Table A2**  
**Cross-Sectional Regressions of Economic Freedom on Constitutional Variables, Averages, 2005–2014**

Variables	(1)	(2)	(3)	(4)	(5)	(6)
	EFW	Size of Government	Legal System and Property Rights	Sound Money	Freedom to Trade Internationally	Regulation
De Facto Entrenchment (inverse)	1.204*** (0.341)	0.229 (0.526)	2.539*** (0.702)	1.375*** (0.475)	1.441*** (0.424)	0.431 (0.444)
Specificity	-8.50e-06** (4.19e-06)	1.43e-05** (5.60e-06)	-2.20e-05*** (6.90e-06)	-2.18e-05*** (6.62e-06)	-9.29e-06* (4.98e-06)	-3.77e-06 (5.19e-06)
Threshold	-1.400* (0.780)	-0.154 (1.208)	-2.108 (1.486)	-2.144* (1.164)	-0.222 (0.934)	-2.378*** (0.857)
Propose	-0.121** (0.0556)	0.0463 (0.0742)	-0.271*** (0.0921)	-0.0769 (0.0795)	-0.116* (0.0658)	-0.186*** (0.0621)
Approval	0.0144 (0.0770)	-0.0922 (0.113)	0.185 (0.145)	-0.0647 (0.122)	-0.0508 (0.0908)	0.0936 (0.0803)
Sessions	0.524*** (0.128)	0.238 (0.219)	0.651** (0.323)	0.742*** (0.197)	0.664*** (0.154)	0.326* (0.166)
Total Constitutions	-0.205** (0.102)	0.0213 (0.121)	-0.237 (0.159)	-0.283 (0.186)	-0.293** (0.132)	-0.230* (0.126)
Observations	149	149	149	149	149	149
R-squared	0.249	0.066	0.226	0.201	0.245	0.170

*Notes:* \*\*\*, \*\*, and \* indicate statistical significance at the 0.01, 0.05, and 0.10 levels, respectively.

Robust standard errors clustered by country are in parentheses. A constant is included in each regression but not reported.

**Table A3**  
**Cross-Sectional Regressions of Economic Freedom on Constitutional Variables, Averages, 2005–2014**

Variables	(1)	(2)	(3)	(4)	(5)	(6)
	EFW	Size of Government	Legal System and Property Rights	Sound Money	Freedom to Trade Internationally	Regulation
De Facto Entrenchment (inverse)	0.640* (0.346)	0.648 (0.604)	1.104** (0.473)	0.747 (0.564)	0.820* (0.433)	-0.124 (0.429)
Specificity	2.05e-07 (4.32e-06)	9.21e-06 (7.07e-06)	-1.05e-06 (5.83e-06)	-1.31e-05* (7.50e-06)	2.63e-06 (4.75e-06)	3.24e-06 (5.86e-06)
Threshold	-1.074 (0.897)	-1.925 (1.425)	-1.160 (1.390)	-0.588 (1.579)	0.202 (1.122)	-1.893* (1.070)
Propose	-0.103* (0.0524)	-0.160* (0.0874)	-0.143 (0.0887)	0.00382 (0.0781)	-0.101* (0.0597)	-0.117* (0.0669)
Approval	0.00499 (0.0778)	-0.0574 (0.126)	0.150 (0.117)	-0.102 (0.134)	-0.0480 (0.0872)	0.0823 (0.0965)
Sessions	0.292** (0.120)	0.345 (0.209)	0.157 (0.200)	0.578** (0.222)	0.252* (0.146)	0.129 (0.171)
Total Constitutions	-0.158* (0.0876)	-0.0857 (0.134)	0.0297 (0.128)	-0.270 (0.230)	-0.221* (0.115)	-0.240* (0.142)
Federalism (1 = Yes)	-0.395* (0.216)	-0.0678 (0.325)	-0.276 (0.268)	-0.593 (0.372)	-0.814*** (0.275)	-0.223 (0.218)
% Urban	-0.00215 (0.00469)	0.000957 (0.00638)	-0.00871 (0.00651)	-0.00294 (0.00815)	0.00744 (0.00537)	-0.00750 (0.00582)
Human Capital Index	0.529*** (0.119)	-0.0132 (0.208)	1.063*** (0.188)	0.781*** (0.233)	0.473*** (0.133)	0.344** (0.144)

Table A3 (Continued)

Variables	(1)	(2)	(3)	(4)	(5)	(6)
	EFW	Size of Government	Legal System and Property Rights	Sound Money	Freedom to Trade Internationally	Regulation
Investment Share of GDP	0.434 (0.978)	-1.979 (2.040)	3.366** (1.404)	0.402 (1.797)	0.0331 (1.125)	0.351 (1.206)
Export Share of GDP	-0.329 (0.351)	-1.141* (0.682)	-0.132 (0.422)	-0.938* (0.557)	-0.172 (0.381)	0.731** (0.363)
Per Capita GDP (in Thousands)	0.0207*** (0.00687)	-0.00807 (0.00974)	0.0464*** (0.0100)	0.0292** (0.0118)	0.0192** (0.00801)	0.0167** (0.00798)
Observations	104	104	104	104	104	104
R-squared	0.580	0.286	0.731	0.459	0.560	0.409

*Notes:* \*\*\*, \*\*, and \* indicate statistical significance at the 0.01, 0.05, and 0.10 levels, respectively. Robust standard errors clustered by country are in parentheses. A constant is included in each regression but not reported.