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Conclusions

This book presented an institutional analysis of amendment provisions. As such, in Lakatos' (1978) terms, it is part of a scientific research program based on the assumption that institutions matter, trying to identify how and why they do. This means that the significance of institutions is part of the *negative heuristic* of the program – that is, it is part of the assumptions that will not be abandoned within the research program. The reader may ask: What if empirical research found no evidence that institutions matter? This is exactly what we discussed in the Introduction as well as in Chapter 3. This book demonstrates in both Chapters 3 and 6 that the empirical analyses leading to the conclusion that institutions do not matter had some theoretical or methodological flaws that needed correction, following Lakatos' methodology. I also applied Lakatos' methodology in a positive way throughout the whole book and made a converse argument in Chapter 3. There, I explained what was wrong with previous cultural approaches to constitutional amendments without rejecting the research program of cultural analysis as a whole, instead arguing that we have to go back to the drawing board within this program. Therefore, the book is an application of the Lakatos hierarchy among heuristics in the area of constitutions and their amendments.

However, this conceptual hierarchy is not the only one that exists inside this book. I argued in the Introduction that there is a hierarchy (with three levels) of decisions: within the constitution (legislation by parliaments, statutory and constitutional interpretation by courts), outside the constitution (amendments), and constitutional replacement. These three levels require different rules and should not be confused with one another.[1] Confusion between constitution and legislation (making the constitution amendable as if it were legislation) degrades the constitution. It can happen at the empirical level by organizations,

[1] This is true unless specified by the constitution, as in the case of Israel, which generates different problems that I discussed in Chapter 1.

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parties, or political actors who try to modify the constitution without following the amendment rules to promote their own interests (that is, to weaponize the constitution). They do this at the expense of democracy. It can also happen at the intellectual level (constitutional moments or unconstitutional constitutional amendments, as we discussed in the Introduction). While the proponents of these ideas do it out of respect for democracy, the result is that they disrespect the fact that the constitution is the rule about the rules.

This book justified the analysis of amendment rules, which is fundamental for understanding the institutions of a country. It is not a new idea, but the justification that the constitution comprises the rules about changing the rules and that they are respected in democracies provided the framework within which the book operates.

This book has chapters explaining the theoretical significance of amendment rules (Chapter 2) and the way the comparative index of constitutional rigidity was constructed. It also includes chapters explaining the variety of the institutions covered in it as well as some conflicts of particular actors about how these institutions should be used or changed (Chapter 1), indicating that the question of whether these rules matter is not shared by the actors on the ground. Finally, it also includes two chapters on cases where the amendment rules led to the failure of attempted amendments (Chapter 4) as well as the overuse of amendment provisions (Chapter 5).

Special attention was paid to referendums (Chapters 1, 2, and 4) because they are often used and because, in my mind, technological advances will lead to more frequent use of this particular institution. Therefore, understanding how they work and what their results are is likely to be particularly important.

Within this framework, I remain faithful to the principle of "follow the decisions" and study how, in different countries, the amendment rules have a fundamental impact on how easy it is to make amendments and how frequent and/or significant these amendments are likely to be. The amendment rules specify how many institutions are required to approve the change and what the conditions are (quorums, qualified majorities) in each one of them, looking at whether these rules operate in a conjunctive or disjunctive way. All these conditions have specific effects on the constitutional rigidity of a country, which in turn is expected to have effects in three different directions. These expectations are corroborated. First, the frequency and significance of amendments are inversely correlated with the constitutional rigidity of the country and its variance.

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In addition, the more significant the amendments, the stronger this relationship is (Chapter 6). Second, the length of the constitution is correlated with a series of negative results like time inconsistency (itself a derivative of constitutional rigidity) as well as economic variables (GDP per capita, inequality, unemployment rate, and innovation; Chapter 7). Third, constitutional rigidity affects judicial independence of the supreme or constitutional court and its variance (Chapter 8).

The main contribution of this book is the combination of these ideas in a coherent framework: the theoretical approach, the way that the variable constitutional rigidity was created, the fact that it is a sufficient but not necessary condition for lack of amendments,[2] and, similarly, that it is a necessary but not sufficient condition for judicial independence. Both expectations require estimation of the results by heteroskedastic regression. They also enable the analysis to focus on one variable – that is, a necessary only *or* sufficient only condition.[3] So, to go back to Lakatos, there were no "inconsistencies," and the theory presented in the book was corroborated. The conclusions of this book can be the basis for further analyses where other researchers will evaluate the impact of their own variables (social, cultural, or any other sort) on constitutions, taking for granted the impact of amendment rules. In this sense, this book is the first step of a whole research agenda on constitutional amendments.

I mentioned in the beginning of the book that for a broad swathe of researchers the developments within nondemocratic countries are more interesting and more worthy of analysis than the ones within democratic countries. However, as I have argued in this book, these developments from an institutional perspective resemble random noise because they depend on other factors like authoritarian rulers; dictators; the military; civil wars; revolutions; social, ideological, or cultural groups; and so on. Such factors are not included in my analysis. This book demonstrated that institutions, in contrast, are *necessary* conditions, and data analysis is done under this assumption (through heteroskedastic regression). The implication is that if other variables are considered important, after the thorough explanation of the reasons for their relation to constitutional amendments they need to be applied through the same institutional framework. In other words, the results of this book must be considered the basis for further analyses.

[2] Alternatively, that lack of rigidity is a necessary but not sufficient condition for significant and frequent amendments.

[3] To be clear, not the *only* necessary or sufficient condition.

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There has been an impressive development of constitutional analyses based on the actual text of the constitutions as presented and analyzed by the site Constitute (www.constituteproject.org). Their work has been cited extensively in this book. However, my results are significantly different. I explained the reasons for the differences: sometimes, it was the lack of the appropriate variables; at other times, it was the precision of these variables or the methodology. Here, I want to point out one other important dimension: *the significance of interdisciplinary research*. It seems like legal scholars are influenced by cultural arguments, as I argue in Chapter 3, yet these arguments either underestimate or misuse the institutional basis of comparative analysis, leading to the inability to use empirical evidence in a systematic way. Further, it may be the case that the hierarchy of rules I present in the Introduction that is based on equilibrium analysis is not as significant in legal analysis as it is on the impact of a change. Finally, from a legal point of view, there is no difference between long and short constitutions, as several legal scholars argue; however, the association with other (economic) variables may be negative, as demonstrated in this book.

The analysis undertaken here can be expanded. The obvious way would be to include more variables or to and expand it to nondemocratic countries. I discussed some of the arguments presented so far and explained why they have to be based on the analyses undertaken in this book as opposed to alternative explanations.

However, there are further institutional modifications that would increase the precision of the arguments presented in this book. For example, there could be more precise estimations of constitutional rigidity, such as estimating the difference between the two chambers of a bicameral legislature on a yearly basis as opposed to only once as I have done here. Even better would be the conceptual inclusion of coalitional politics, whether each chamber has its own coalitional structure or not, and the effect of this factor on constitutional rigidity. Another area would be the identification of the difference between two successive parliaments (in case they are required to agree for a constitutional amendment to be enacted) in exactly the same way as bicameralism. Such approaches would require different (time series) methodology for the analysis because instead of having one observation per country we would have several.

Another possible modification would be the further diversification of institutions. I have used an index of the summation of required institutional veto players and majorities within each one of them. I have used

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all the other institutional variations by adding or subtracting epsilons to which I assigned the value 0.01. What if a researcher wants to fine tune these epsilons even further or wants to argue that some particular ones should be evaluated very differently? The resulting different empirical analyses may have more accurate results.

Another interesting development is evaluating constitutional rigidity in different areas of constitutional decision-making. As I explained in Chapter 2, I calculate only the residual rule of constitutional amendments. However, this rule may not be operative in specific areas of decision-making. For example, if one wanted to analyze the evolution of human rights in different countries, a reevaluation of constitutional rigidity concerning these particular constitutional provisions would be necessary.

Finally, analyses of case studies covering specific countries (like in Chapters 4 and 5) or specific important constitutional amendments (Category 3 in my scale in Chapter 6) that change the political life in particular countries would improve our understanding of the role and significance of constitutions.

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