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Working Paper No. 15
July 1998

W. ALLEN
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Institute of
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ECONOMY

UNIVERSITY OF
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May 1997
[Draft 2.0 -- April 1998]

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* We wrote the first version of this paper for a conference on "Democratization in Poland and Eastern Europe: Progress and Prospects," at Jagiellonian University, Krakow, May 1997.

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1. Introduction

Rampant uncertainty, fluidity, and indeterminacy are central, perhaps defining, features of politics in post-communist Eastern Europe (Bunce and Csanadi 1993). Analyses of politics in the region regularly stress what one writer refers to as "the helter-skelter of post-communism, . . . the bewilderment of life since 1989" (Brown 1994, 17). In post-communist states, then, political actors find themselves in a situation where the entire political world is "in flux." Because in such circumstances many of "the old political labels" are "anachronistic and misleading" there is both an urgent need for, and intense struggles to impose, "new political definitions" (Brown 1994, 35).¹ The situation in Eastern Europe is, in this sense, an instance of a more general pattern in transitional polities where "the very parameters of political action" are not just "in flux" but are "arduously contested" (O'Donnell and Schmitter 1986, 3-6). In this paper we explore in a preliminary way the nature of such contests and identify theoretical resources that might enable social scientists to better understand them. We believe that beyond their substantive importance for understanding politics in post-communist states, such contests illuminate broader issues in political theory.

In our estimation strategic conflicts among political actors in transitional polities revolve not simply around competing interests but around conflicting interpretations. We specify what we mean by this in more precise theoretical terms below. Here it is important to identify the general substantive problem. We assume that political actors are strategically rational in the sense that they recognize that their environment consists, in part, of other equally rational, intentional actors. In more practical terms this means simply that when they formulate their own plans political actors seek to take into account the expected actions of relevant others. They therefore confront the problem of making sense of their ongoing interactions. From this perspective political actors "are both goal-seeking *and* situation-interpreting individuals" (Fenno 1986, 4 stress added). The difficulty arises because in social and political interaction intentions and interpretations are related

¹ Thus Offe, for instance, contends that the "core problem" in current East European states "resides in their lack of any non-contingent 'givens' which would be suitable fixed parameters of the politics of reform. Precisely because the system is at such a deadlock, everything becomes contingent and nothing can self-evidently remain as it is" (Offe 1997, 41).

in complex ways.² In unsettled circumstances such as those that obtain in post-communist countries this poses an especially acute political problem.

Analysts of the region suggest that indeterminacy makes it difficult for political actors to articulate interests and, therefore, to formulate preferences (Ost 1993; Bunce and Csanadi 1993). We think, instead, that actors in the region face a more basic and, arguably, more acute problem that derives from the fragmented, ambiguous, and inadequate character of available interpretive resources and the distinctive sort of political conflict to which this gives rise. "Since anything can mean virtually anything, any and every interpretation of what is happening and the impact of what is happening is possible. . . . In such a situation it is natural for individuals to try to make sense of everything by creating a rational interpretive scheme that they then force onto the situation" (Bunce and Csanadi 1993, 270).³ Political actors face an ongoing problem. They must jointly recognize some particular, partial, and often contested scheme for interpreting other actors, institutions, and events. Unless they successfully do so the social and political world will remain "in flux." The problem, of course, is especially acute insofar as this hardly is a purely cooperative endeavor. Political actors advance and defend interpretations that are competing in the sense that they are partially or wholly incompatible. They strive to impose those interpretations on others.

Examples of such interpretive contests are common enough in contemporary Eastern Europe. In much of the post-communist world the idea of "Europe" has become a powerful interpretive resource. Minimally, "Europe is the opposite of what we have and what we want to get rid of - it is the absence of communism, of fear and deprivation" (Drakulic 1996, 12). More expansively it commonly is held to symbolize a constellation of Western commitments to, for instance, democracy, commerce, civil society, respect for human rights, and so on (Konrad 1995). In either case, "there is an assumption that everyone knows what we mean by Europe" (Drakulic 1996, 11). Yet even this seemingly unambiguous and attractive idea has been subject to intense interpretive conflict. In Romania, for example, the idea of "Europe" is passionately contested by political actors intent on imposing quite divergent interpretations on their new political world. On

² It is possible to state this in more general, philosophical terms. "On a causal-instrumental account of rationality, our standards of rationality must depend upon our view of the character of this world and upon our view of what we are like . . . Clearly [however] there is an interplay. We use our standards at one time to discover the world's character and our own, and on the basis of this new understanding we modify or alter our standards so as to make them, as wielded by us, (most likely to be) most efficacious in that kind of world (as we newly understand ours to be). The process continues, for those new standards lead to still further modifications in our view of the world and of ourselves, and hence to newer standards and so forth. Our view of the world and of ourselves, and our notion of what counts as rational, are in continual interplay" (Nozick 1993, 134-5).

³ "What is regarded as an 'insult to the armed forces,' and 'act of secession,' or a 'threat to property' is hardly a constant. Nor is it possible to specify *a priori* how specific social sectors will interpret the situation and react" (O'Donnell and Schmitter 1986, 27).

the one hand, liberals endorse the idea of "Europe" as cosmopolitan and, as such, as "the source of the political and economic forms that Romania should adopt." For nationalists, on the other hand, "it means a neoimperialist menace threatening Romania's independence" (Verdery 1996, 105). Interpreted in light of pre-1989 Romanian communism the idea of Europe clearly lends itself to disparate renderings. Just as clearly, the outcome of this conflict of interpretations - judged in terms of the ability of the contending groups to render "Europe" salient after their own fashion - is of considerable importance for the way that political actors understand their ongoing interactions.

Strategic conflicts of interpretation are a general and persistent feature of politics that, we believe, is heightened in transitional politics. We defend this claim in two ways. Substantively, we focus on the politics of constitution-making in contemporary Eastern Europe. This allows us to illustrate various sorts of interpretive conflict in more concrete terms. Theoretically, we rely on a range of rational choice, and specifically game theoretic models of politics. This allows us to demonstrate that the sorts of conflict we identify are pervasive in politics generally and not merely an artifact of transitional circumstance. We believe, somewhat controversially, that game theoretic analysis can illuminate both the concrete examples of East European constitutional politics and the more general problem of political indeterminacy that they exemplify. This view is controversial in at least two respects. In the first place, analysts tend to depict transitional politics as qualitatively different from more settled or "normal" politics (O'Donnell and Schmitter 1986). They also commonly identify the circumstances in post-communist East Europe as unique even as compared to other political transitions (Bunce and Csanadi 1993, 266-7; Offe 1997, 31-2). In the second place, this assessment of transitional politics as especially fluid and uncertain often makes those same analysts skeptical about the usefulness of established social scientific tools for the study of political-economic transitions (O'Donnell and Schmitter 1986, 4; Bunce and Csanadi 1993, 273). By contrast, we argue that game theoretic models enable us to establish that normal politics is not so settled and, therefore, that transitional politics is not so uniquely indeterminate as is commonly supposed.

Periods of transition like that underway in contemporary Eastern Europe present social and political actors with complex, ongoing coordination problems across multiple domains. As a result, "the transformation of the post-communist societies should be understood as an inherently uncertain process with a plurality of possible outcomes" (Pogany 1996, 569). There is, from this perspective, clearly no guarantee that the transition from communism will generate a more stable, efficient, or normatively attractive set of political economic arrangements (Przeworski 1991; Bunce 1993). Indeed, some doubt that the intuitively appealing aspiration to simultaneously establish constitutional democracy and market economies in post-communist societies is internally coherent (Elster 1993b; Offe 1997, 29-49). They may be correct. Even if we set such doubts aside, however, there minimally are -- in addition to various forms of constitutional democracy -- three plausible alternative outcomes to the post-communist transformations. They may result in [i] authoritarian regimes in which markets, democracy, or both are at best partially institutionalized, [ii] military dictatorships of various political persuasions, or [iii] unstable polities plagued by ethnic or religious divisions (Pogany 1996, 575-6). Any of these outcomes might be

stable in the sense that it could constitute what game theorists call a coordination equilibrium (Ordeshook 1992; 1993).⁴ For strategic actors, then, transitional politics constitute a "derived coordination problem" (Calvert 1992, 11-13; 1995a, 242-3). They are caught in ongoing but very poorly defined interactions, where the anticipated long-term stakes are substantial, and where experience - whether of success or otherwise - at one stage is not easily generalizable to subsequent encounters.

A constitutional arrangement represents one possible resolution to this sort of complex coordination problem. A constitution is a set of general rules that govern social, political and economic interactions and that are relatively difficult to change. A constitution typically specifies rules for at least three domains: "individual rights, the machinery of government, and procedures for amending the constitution" (Elster 1993a, 175). Beyond that, however, constitutions are fairly arbitrary in a quite specific sense. By definition a coordination problem gives rise to multiple equilibria. Consequently, various specific constitutions, containing a variety of different provisions, might serve to coordinate political-economic interactions in a given society. This is relatively easy to see in East Europe even if we confine our attention to just part of one of the three domains mentioned above. Consider the "machinery of government." This category minimally will establish an electoral regime and specify the relations between executive and legislative institutions. Once established these political arrangements typically exhibit two features of what, in game theoretic terms, are equilibrium institutions. First, they are stable in the sense that "drastic changes in electoral systems and shifts from presidentialism to parliamentarism or vice versa are extremely rare" (Lijphart 1992, 208).⁵ Second, they are quite various. The electoral systems in the region are diverse ranging from the extreme PR system in Poland to a nearly majoritarian arrangement in Hungary (Lijphart 1992; Lucky 1994). Similarly, the "emerging democracies in East and Central Europe offer a more diverse range of configurations" of executive-legislative relations "than any other region of the world" (Shugart 1993, 32). They range from purely parliamentary in Hungary, to different types of mixed presidential-parliamentary arrangement in the Czech Republic and Bulgaria, to relatively strong presidentialism in Poland (Lijphart 1992; Shugart 1993). In short, when considered only along these two dimensions, the constitutions of post-communist states coordinate politics in very different ways.

⁴ An equilibrium is an outcome generated by the interdependent choices of strategic actors. In equilibrium each actor is doing what she thinks is best for her, given her expectations regarding what relevant others will do. As a result, in equilibrium, no actor has reason to unilaterally act otherwise. Note that to characterize some outcome as an equilibrium in this sense does not entail that that state of affairs is efficient, fair, or otherwise normatively attractive (Schelling 1978, 26-7).

⁵ This is not a tendentious interpretation. Despite his own aversion to rational choice models Lijphart endorses a broadly rational choice account of the constitutional politics that produced these equilibrium institutions in Poland, Hungary, and Czechoslovakia. On the notion of equilibrium institutions see Calvert (1995a; 1995b). On the various mechanisms that can generate such equilibria see Knight (1992; 1995).

Outline of the paper. In the next section, we review the rational choice literature on constitution making. The traditional approach, contractarianism, focuses on how political agents agree ex ante to rules that will bind them in the future. More recent approaches focus on the more important problem of coordinating the expectations of participants and achieving a self-enforcing constitutional equilibrium. We argue that existing accounts continue to neglect important features of constitutional politics, particularly those revolving around conflict of interpretation and processes of deliberation.

Section 3 spells out phenomena that are basic to any empirical understanding of constitution making but that find no place in the existing models. It also suggests this omission reflects well recognized, larger difficulties in game theory, specifically the tension between the needs of closed-system formal modeling and the open-universe character of many political settings. The section concludes by identifying some initial attempts by game theorists to create a more encompassing approach to the modeling of rational political actors.

In section 4, then, we propose a model of our own that formalizes some of the processes of deliberation and interpretation previously omitted from rational-choice theories of constitutional politics. In this model, we give the actors a shared repertoire of similarity relations that can be used to construct arguments on principle. These arguments, in turn, contribute to the players' selection among equilibrium patterns of play, whether to establish constitutions or to apply them to particular cases. Transition and democratic politics appear then simply as successive stages in a series of coordination games. Finally, section 5 explores some implications of the model both for the study of transitional politics and of other, ostensibly unrelated, phenomena of democratic politics.

2. Constitutions as Coordination

Traditional rational-choice accounts of constitution-making and constitutionalism have regarded a constitution as a sort of contract, and constitution making, therefore, as an exercise in contracting to achieve well-defined gains from trade.⁶ Mueller (1991) applies the contractarian model specifically to the Eastern European transitions. More recently, however, a few authors writing about constitutions in general and about the East Europe transitions in particular, have suggested that the classic game-theoretic problem of "coordination" (Hardin 1989; Ordeshook 1992;1993; Schelling 1960). They argue that this model both captures important features of the problem of establishing a constitution that the contractarian model elides and avoids some flaws in the contractarian model.

While the coordination approach, as developed thus far, makes an important theoretical advance over previous constitutional theory, it too ignores some prominent features of the

⁶ Brennan and Buchanan (1985). For a critical survey see Hardin (1988).

process of building and maintaining a constitution. Both the contractarian and the coordination model are open to the criticism that they underestimate the difficulty participants have in connecting their future interests to the politics of the transitional era; neither model admits any interpretive activity by the participants. On the coordination view, constitutionalization is still, in theory, a simple story of bargaining followed by automatic self-enforcement. We propose to reformulate the coordination model in ways that highlight how the making of a constitution, and life under that constitution, consists of an unending series of different coordination problems, in which the solution of one is never a perfect guide for the solution of subsequent ones. Our approach accords central theoretical roles to "arguing" (Elster 1995), deliberation, and interpretation, and sees a lasting constitution as an evolving convention, rather than a static accomplishment.

The state of nature and the constitutional contract

Discussions of the value of political order and the difficulties inherent in creating it often point to the conflict of interests inherent under anarchy. This is of course the focus of Hobbes' *Leviathan*, as well as of subsequent discussions of the constitution of government as a *contract* among citizens (e.g. Brennan and Buchanan 1985). In the posited "state of nature," each individual is tempted to take what others have, and the absence of political order is a state of conflict that is bad for everyone. Political order restrains this conflict, making everyone better off, or at least everyone in some subgroup sufficiently powerful to maintain it. Contention over control of the political order, however, is a constant source of renewed violence and unrest. On this view, political order by means of a democratic constitution produces more peace, and distributes the benefits of peace more widely.

When game theorists think of political order and constitutions in this way, they think of the underlying problem as being analogous to a Prisoner's Dilemma: all would be better off to keep what they have, leave everyone else alone, and have peace; but regardless of the actions of others, each is tempted to try to take advantage by, say, stealing, cheating, or otherwise taking advantage of others, either directly or using the political system. In the absence of some sort of enforcement of order, the inexorable result is political illegitimacy and widespread conflict. The Prisoner's Dilemma (PD) game is illustrated in Figure 1, a simple two-player, two-alternative version of the game. In a PD, each player finds it unambiguously in his or her private interest to "defect," regardless of what actions others take, with the result that both are worse off than they would have been if both had "cooperated." In the language of game theory, to defect is a "dominant strategy" for each player, so that individual rationality allows for no other outcome than mutual defection. But this dominant strategy outcome is "inefficient" since an alternative *combination* of choices, namely mutual cooperation, could have made both players better off.

Figure 1 -- Prisoner's Dilemma Game

| | | | |
|----------|-----------|-----------|--------|
| | | Player 2 | |
| | | Cooperate | Defect |
| Player 1 | Cooperate | 2, 2 | 0, 3 |
| | Defect | 3, 0 | 1, 1 |

note: cell entries are payoff to player 1, payoff to player 2

The problem of establishing an authoritarian political order seems to be solved fairly readily in the real world, despite the recurrence of unrest, and it has little occupied political thinkers. Establishing a democratic constitution, however, is far more problematic in practice; seen from the standpoint of the Hobbesian state of nature, this is no wonder. If the central role of government is to suppress conflict among the governed, and if there is no recourse to outside enforcement of constitutional rules, how can democratic control be established over the PD conflict inherent in the state of nature? If any agency is given the resources and organization to enforce order, what can keep them from destroying democracy and taking all the gains of peace for themselves? A democratic constitution must be self-enforcing, and in the Prisoner's Dilemma setting, it's difficult to see how it can be. A constitution is said to be like a contract, in that a contract of exchange governs a situation very much like this: each party to an exchange would like to obtain the goods or money of the other party without performing his own side of the bargain. A contract prevents this through the credible threat of outside enforcement.

Repeated political interaction

Political theorists inclined toward game-theoretic thinking have pointed out, however, that this PD situation in social interaction often does not have such a one-time nature. Rather, it represents a situation that is repeated between the same individuals.⁷ In that setting, the temptation to steal, squeal, or "defect" in the PD may be controlled, not by outside enforcement, but by the possibility of continued cooperation if each party behaves itself. For example, suppose that the game in Figure 1 is repeated indefinitely many times, with future payoffs being discounted by a factor δ per period. Whereas defection was the dominant strategy in the one-time game in Figure 1, in the repeated version of this game unconditional defection is not a dominant strategy: depending on how one's opponent plays the game, it may, even in purely selfish terms, be better for one to cooperate than to defect. For example, suppose that player 1 employs the famous "Tit-for-Tat" (Rapoport and Chammah 1965) strategy in the repeated game: begin by cooperating; and on each iteration thereafter, do whatever your opponent did on the previous iteration. Then an

⁷ Taylor (1987). They say the same about economic exchange; see for example Telser (1980).

opponent who always defects will earn a payoff of 3 on the first iteration and 1 on every iteration thereafter. But an opponent who always cooperates will earn a payoff of 2 on every iteration. If the discount factor d is not too small, that is, if future payoffs are not discounted too heavily, then a rational player would choose cooperating over defecting. Figure 2 illustrates the actions and payoffs for the two players under either of these strategies. Specifically, the profile of strategies in which both players use Tit-for-Tat is an equilibrium in the repeated game, and results in a self-enforcing pattern of cooperation on every turn by both players. Thus the conditional promise of continued mutual cooperation convinces each player to keep cooperating as long as the other does so too.

Figure 2--Actions and Outcomes in the Repeated PD

Tit-for-Tat against Unconditional Defection:

| | | | | | | | |
|--------------------------|---|---|---|---|---|-------|-----------------------------|
| period | 1 | 2 | 3 | 4 | 5 | . . . | |
| <u>actions:</u> | | | | | | | |
| Player 1 (Tit-for-Tat) | C | D | D | D | D | . . . | |
| Player 2 (always Defect) | D | D | D | D | D | . . . | |
| <u>payoffs:</u> | | | | | | | discounted sum: |
| Player 1 | 0 | 1 | 1 | 1 | 1 | . . . | $\delta / (1 - \delta)$ |
| Player 2 | 3 | 1 | 1 | 1 | 1 | . . . | $3 + \delta / (1 - \delta)$ |

Tit-for-Tat against Tit-for-Tat:

| | | | | | | | |
|------------------------|---|---|---|---|---|-------|--------------------|
| period | 1 | 2 | 3 | 4 | 5 | . . . | |
| <u>actions:</u> | | | | | | | |
| Player 1 (Tit-for-Tat) | C | C | C | C | C | . . . | |
| Player 2 (Tit-for-Tat) | C | C | C | C | C | . . . | |
| <u>payoffs:</u> | | | | | | | discounted sum: |
| Player 1 | 2 | 2 | 2 | 2 | 2 | . . . | $2 / (1 - \delta)$ |
| Player 2 | 2 | 2 | 2 | 2 | 2 | . . . | $2 / (1 - \delta)$ |

Taylor (1987) first explored the implications of repeated-game cooperation for democratic theory, pointing out that cooperation in repeated Prisoner's Dilemma interactions could be the basis for political order without government, obviating the need to design a democratic constitution. One need not go that far, however, to accept that rational cooperation as a result of repeated interaction may represent exactly the kind of self-enforcing rules necessary to a democratic constitution. On this view, a constitution is not analogous to an externally enforced

contract. Rather, the constitutional agreement is an agreement to pursue a particular cooperative equilibrium in an ongoing problem of social cooperation.

Convention and coordination

Hardin (1989) however, points out that such a "contract by convention" (see also Hardin 1982) is still an insufficient conceptual tool for understanding the problem of establishing a constitution. Even a simple cooperation problem may be solvable by an infinity of different, equilibrium cooperative arrangements (Taylor 1987: 78-79,103). The trouble is, each of these may be incompatible with the others, and if individuals do not share the same expectations about which of them is in effect, cooperation is likely to break down. Illustrating this using the repeated version of the simple Prisoner's Dilemma in Figure 1 seems a little artificial, but gets across the general point. Suppose that one player expects the following equilibrium: both players will play Tit-for-Tat with respect to the odd-numbered iterations of the game only, and both players will ignore, and always defect on, even-numbered turns. Again, if d is large enough, this combination of strategies would be in equilibrium, and would yield payoffs of 2 in every odd-numbered iteration and 1 in every even-numbered one. But suppose the other player anticipates the use of Tit-for-Tat on even-numbered turns, with mutual defection expected and accepted on all odd turns. Such a combination of strategies would yield a payoff of 1 in every odd-numbered iteration and 2 in every even-numbered one. These patterns of play are illustrated in Figure 3. Either strategy combination will yield the players a higher payoff than would unconditional defection. However, if one player plays according to the first (Odd TFT) equilibrium while the other plays according to the second (Even TFT), the result will be perpetual defection (except for a couple of initial instances of unilateral cooperation). Each player ends up punishing the other for perceived violations of the expected cooperative pattern, and the gains from cooperation are lost. In a more general version of the repeated PD with many players, varying payoffs, or incomplete information, even efficient, "full" cooperation is achievable via several different, incompatible equilibria. In general, it is important that both players have the same, or similar, expectations about who should cooperate, when, in what way, and what are the acceptable reactions to a deviation from that pattern.

Thus in order to solve its problems of cooperation, a society must *coordinate* on one such arrangement. There are many forms of cooperation each of which would make all citizens better off than non-cooperation in the state of nature; but some will be better off under one equilibrium, while others prefer a different arrangement. Establishing a constitution is a problem of coordination with mixed motives. The simplest version of a game embodying such a problem is that shown in Figure 4. This game has very different properties than does the one-shot Prisoner's Dilemma from Figure 1. If one expects one's opponent to take action x , one wishes to take action x ; if y , then y . If such a game has been played before or discussed in advance by these two players, they may have an easy time deciding what to do; otherwise, they are willing to attempt a

solution by trial and error.⁸ In terms of the repeated cooperation game, strategy x might represent the Odd TFT

Figure 3--Actions and Outcomes When Players Expect Different Cooperative Equilibria

| | | | | | | | |
|---------------------|---|---|---|---|---|-------|--|
| period | 1 | 2 | 3 | 4 | 5 | . . . | |
| <u>actions:</u> | | | | | | | |
| Player 1 (Odd TFT) | C | D | C | D | C | | |
| Player 2 (Odd TFT) | C | D | C | D | C | . . . | |
| <u>payoffs:</u> | | | | | | | |
| Player 1 | 2 | 1 | 2 | 1 | 2 | . . . | discounted sum: $(2 + \delta) / (1 - \delta^2)$ |
| Player 2 | 2 | 1 | 2 | 1 | 2 | . . . | $(2 + \delta) / (1 - \delta^2)$ |
| period | 1 | 2 | 3 | 4 | 5 | . . . | |
| <u>actions:</u> | | | | | | | |
| Player 1 (Odd TFT) | C | D | D | D | D | | |
| Player 2 (Even TFT) | D | C | D | D | D | . . . | |
| <u>payoffs:</u> | | | | | | | |
| Player 1 | 0 | 3 | 1 | 1 | 1 | . . . | discounted sum: $3\delta + \delta^2 / (1 - \delta)$ |
| Player 2 | 3 | 0 | 1 | 1 | 1 | . . . | $3 + \delta^2 / (1 - \delta)$ |

strategy and strategy y the Even TFT strategy, or more properly, unbalanced versions of them that require one player to cooperate more often than the other to avoid retaliation, so that there is substantial disagreement about which of the cooperative strategies is more desirable. In terms of political interaction, the strategies of the coordination game represent different possible *whole systems* of mutual obligation, expectation, and retaliation; any one of these combinations would comprise a specific political or constitutional order.

8 The simplest way to formalize "trial and error" and its costs is through the symmetric mixed-strategy equilibrium of the game in Figure 4. If the game is played once only, it has three equilibria: the two coordinated pure strategies yielding a payoff of 2 to one player and 1 to the other; and a mixed strategy equilibrium in which each player randomizes between x and y. For the payoffs given in Figure 4, this means playing x with probability 2/3 and y with probability 1/3, yielding an expected payoff of only 5/9 for each player--worse even than the less favored pure-strategy equilibrium. This result holds true for all such coordination games. In the absence of any reason to focus on one or the other pure-strategy equilibrium, the mixed-strategy equilibrium captures the whole "problem" of the coordination problem; to solve the problem is to discover a way to achieve one of the pure-strategy payoffs dependably.

Figure 4--A Game of Coordination

| | | | |
|----------|---|----------|------|
| | | Player 2 | |
| | | x | y |
| Player 1 | x | 0, 0 | 2, 1 |
| | y | 1, 2 | 0, 0 |

note: cell entries are payoff to player 1, payoff to player 2

Solving the coordination game is a matter of establishing a convention (Lewis 1969; Hardin 1982), rather than establishing a contract. The most important difference is that, whereas all parties to a contract must agree to be bound by it, a convention requires much less extensive *ex ante* agreement in order to become, in effect, binding on all affected parties (Hardin 1989).

On Hardin's view, then, the problem of establishing a constitution, of making the transition to democracy, becomes a problem of bargaining over which of many possible conventions will be agreed to. If the conflict of interest across different conventions is small, and the value of coordination over disagreement is large, the problem is nearly one of pure cooperation; some participants in the East European transitions saw their situation this way. Przeworski writes that "several voices in Poland suggested that the country should just take any old Western European constitution and be done with it" (1991: 85-86). And Laszlo Solyom, president of the Hungarian Constitutional Court, said in a recent interview that at this late date he "does not see the real importance of drafting a new constitution" to replace Hungary's putatively provisional one, "because the existing constitution works" and has gained "legitimacy and acceptance," while the right moment for gaining widespread support for a new one has passed (Mink 1997: 73). From these viewpoints, if coordination can be established, any reasonable constitution will serve; and if no improvement in coordination can be had, there is no point in writing a new, "improved" constitution.

More often, all parties to the bargaining will insist on a convention that is not too unkind to their own interests. Once the bargainers agree, the convention they agreed upon becomes a focal point (Schelling 1960) in society's constitutional coordination game. If enough parties in the society accept the outcome, all others will find it in their interest to go along with it as well, so the problem of establishing the necessary self-enforcing order is less daunting than that of establishing an externally-enforced contract (Hardin 1987). Once the bargaining problem is solved by agreement upon a convention, constitution making is complete. This is not a trivial problem, of course, even in theory: conflicts of interest may make the bargaining problem insuperable, and the coordination problem in question is so complicated that the bargainers can scarcely know whether an agreed-upon solution will actually comprise an equilibrium, or fail to be self-enforcing. But

Hardin's approach suggests an appealingly simple analysis of what is involved in establishing a constitution. We believe that, unfortunately, this analysis omits consideration of several factors that complicate, and are critical in understanding, the problem of democratic transition. We return to these below.

Ordeshook (1992), following Hardin's general approach, opens up broader possibilities by distinguishing between two different levels of choice: the choice among procedures, which takes place at the time of constitutional negotiation but can be opened up again at any time; and choices, using those procedures, among policy alternatives, which goes on continuously. Ordeshook agrees that creating a constitution is a problem of coordinating choice among a great variety of equilibria in a setting of repeated interaction. But he notes that "social action [can be] coordinated also by a variety of informal norms . . . that can coincide with more insidious things such as ethnicity, language, and race," so a constitution "must be designed to compete with other things for the political-economic organization of society. . . . [it] must establish a set of stable and self-generating expectations about peoples' actions that overcomes alternative expectations" (148-49; see also Johnson 1997).

Moreover, on Ordeshook's view a constitution is supposed to be a lasting guide to resolving political conflict and making political choices. Its "rules . . . must be clear to allow for subsidiary planning and strategic maneuver" (151) over political decisions without itself coming undone. On the other hand, at the level of policy choice constitution-framers ought not "try to 'nail down' every detail and negotiate every contemporary political conflict, with the consequence that they are unlikely to secure much allegiance in public debate and cannot coordinate political action for very long" (149). In short the constitution is to provide a guide that will be compelling, when compared to competing loyalties, ideologies, or principles, across a long future of various and unforeseeable political conflicts. Like Hardin, Ordeshook draws on a model, the establishment of an equilibrium in a coordination game, that would seem to require the participants to succeed in one big initial coordination problem, the framing of a constitution; this agreement can then be publicized and gain acceptance (Ordeshook 1992: 147), following which it can guide all political decision making for a long time to come. Citizens then avoid further constitutional conflict and stick to fighting out policy issues under the constitution's rules:

If I cannot know which procedure will most benefit me in the future and if I value the time that can be saved by avoiding incessant debate over process as each opportunity to decide something arises, then I will prefer committing to the same 'fair' procedure in every circumstance. Even if issues arise in which I see temporary advantage in some alternative procedure, . . . I should choose to abide by the status quo procedure if deviations unlock the door to future chaos . . . (Ordeshook 1992: 158).

Ordeshook's available "procedures" are just instances of the systems of mutual obligation and expectation that made up the strategy sets of the Hardin model: politicians take certain actions in the expectation that other politicians will act, in turn, in some specific way. In framing a

constitution, participants must coordinate on these, and this is the coordination game that both Hardin and Ordeshook consider formally. But then Ordeshook's constitution assists citizens in "coordinating" in the making of future policy decisions, so that they are always operating under a fixed and agreed-upon set of rules that channel political conflict.

In these instances, the threat persists that other, more "insidious things" such as ethnic loyalties will take over the definition of the rules of conflict. This persistent danger hints that the framing of a constitution has *not* coordinated things once and for all, as claimed. If a constitution is the solution to a coordination problem, rather than to a PD, but coordination problems occur constantly, then in what sense exactly has the constitution coordinated anything? It is to this theoretical puzzle that we turn below. First, however, let us (1) specify the empirical puzzles that the Hardin and Ordeshook models seem to leave unresolved, and (2) situate the whole question in a much more fundamental theoretical puzzle in game theory.

3. Unresolved Issues

Before we elaborate our model it will be helpful to clarify the full implications of the coordination model, both as a theoretical venture seen in the larger context of game theory, and as a model of constitutionalism and transitions in view of the struggles over interpretation that occupy so much of the effort of framers and citizens. We turn first to some empirical phenomena that the coordination view, as presently formalized, seems to omit. The phenomena in this list are by no means mutually exclusive; indeed, one of our main goals is to show that they are closely related.

Substantive issues: The problem of interpretation

The role of "arguing" in constitution making. Elster (1995) distinguishes two modes of discourse in constitution making: "arguing" and "bargaining." It is easy to identify bargaining in the coordination model as well: in trying to choose one coordinated outcome or the another, the participants are bargaining over the alternate distributions of the gains from coordination. But if we understand "arguing" as the enunciation of principled, general-welfare-based reasons for preferring one constitutional alternative over another, it seems to have no place in the simple coordination problem. Perhaps in an extended, incomplete-information version of Hardin's model, one might find rational participants attempting to share information with one another about the true values of payoffs in the coordination game, and thus about efficiency gains. This form of arguing alone, however, wouldn't capture an important aspect of the arguing over principles that takes place in politics: arguments and principles sometimes have force independently of the mere sharing of information and contrary to the immediate interests of the participants.

A prominent example may be found in the Hungarian transition and early elections to the National Assembly. The combined regional-list and single-member-district electoral system that

emerged from Hungary's Roundtable talks in 1989 was a compromise between old-name parties (which, weighted by membership, tended to represent the rural-populist interests) and the communists and urban-intellectual opposition, who could offer prominent candidates but whose party names would attract few additional votes (Sajo 1996a: 84). This system turned out, unexpectedly, to produce a strongly disproportionate relationship between votes and seats. Immediately following the first elections in 1990, "the losers began to play up the difference between the popular vote and the parliamentary representation . . . The winners too act[ed] as if they were conscious of an embarrassing gap" (Arato 1994: 27). In response, the populist, plurality Hungarian Democratic Forum, although it stopped short of forming a grand coalition with all the non-communist parties, "did cobble together an 'overly large' coalition . . . [and] proceeded to make a political pact with the AFD [Alliance of Free Democrats], the main opposition party, to amend the constitution. The 1994 winners [the majority, post-communist Hungarian Socialist Party], having received only 33 percent of the popular vote, acted in an analogous fashion" (Arato 1994: 27). Both these pacts had considerable practical impact. The price for AFD support in the 1990 "pactum" was that the presidency be awarded to the AFD's Arpad Goncz (Ilonszki 1993: 261), who still holds that post even though the AFD has never formed a government. The post-1994 parliamentary committee to propose a permanent constitution adopted a requirement that a 2/3 (later amended to 4/5) vote would be required in order to report a draft, which would require extensive support even from outside the supermajority governing coalition. Why did the HDF and the HSP voluntarily forgo their opportunities to make policy more to their liking when they had the ability to do so? Evidently they feared creating a climate of illegitimacy that might destroy the young constitutional order, making any policy victories short-lived. Arato puts it this way:

The winners of each election . . . disclosed through their actions that they were troubled by a merely procedural legitimacy and the potentially weak democratic basis of any government built upon the constitutionally minimum number of parliamentary votes (Arato 1994: 27).

Even though they won fair and square under the agreed-upon constitutional rules of the game, the HDF and HSP felt constrained as well to adhere to the principles of proportionality and constitutional consensus. The initial agreement on the Hungarian constitution (or rather constitutional amendments) was not merely a coordination on a mutually agreeable set of procedures. It was accompanied by arguments over principles, such as the desirability of moderately proportional representation and the need for broad consensus on a constitution, that stood behind the agreement, and many of those principles were themselves broadly accepted and acquired constitutional force. Yet the statement of such principles plays no explicit role in the simple coordination model of transition.

Arguing over principles after the constitution is made. Once a constitution is established, how it should be applied in an actual situation is often unclear from the written document itself. As a result, the problem of coordination on procedures continues within a constitutional system; it has not been solved by the initial agreement. The simplest illustration of

this lies in the frequent application of precedent to determine the rules for a given situation. Anytime precedent is invoked in stating the correct constitutional procedures to follow, we know that the rules as originally given were not sufficient to ensure common expectations about those procedures. Often, of course, political actors argue over what precedents to apply, disagreeing as a result on what procedure will be constitutional or legal in a given case. Somehow that disagreement must be settled (often by a president or a court), and a particular argument is thereby declared the correct one and established for future reference in making similar decisions. This procedure is of course fundamental to systems of case law, but it applies to politics more broadly.

It is not merely precedents that are argued over after a constitution is in effect. Unwritten or general principles are invoked again and again to guide future claims about what actions are proper and constitutional in ambiguous cases. Often, competing principles are pitted against one another. This is especially obvious in the work of courts, where a constitutional doctrine once enunciated will be used repeatedly, in a variety of subsequent cases, and often elaborated to produce new principles. Consider for example the Hungarian constitutional declaration that Hungary shall be "a state conducting itself according to the rule of law."⁹ The Hungarian Constitutional Court "has pursued its role of constructing 'a state founded on the rule of law' with, at times, remarkable vigor" (Pogany 1993: 341). The Court has applied the doctrine to all legislation passed by the present or any previous legislature under the current (although now extensively amended) constitution (Pogany 1993: 342), including those under the communist regime. It has used that doctrine to decide important parts of subsequent cases, generating new, subsidiary principles in the process. Examples include the principle of "novation of old promises" from the *Compensation Cases* (Klingsberg 1993: 45-47) and the concept of "legal certainty" in the welfare reform decisions of 1995 (Sajo 1996b).

The need for such principles beyond the words of the constitution, and the careful elaboration of constitutional principles after the constitution is already ratified, are phenomena that have no place in either a world where, as in Hardin's formalization, the constitution solves a coordination problem once and for all, or where, as Ordeshook tacitly assumes, a constitution provides principles that can be depended upon to coordinate all future political conflict. Arguing over principle may have a strategic element, as Elster (1995) suggests, but even this element does not appear in the simple coordination model.

Deliberation. Democratic theorists traditionally, and with renewed enthusiasm recently, identify deliberation as a key feature of democratic politics. Citizens and officials who exchange arguments, respond to them, and alter their expectations and demands because of them are

⁹ According to Pogany (1993: 340 n. 46), this phrase is a rough translation of the Hungarian term *jogállam*. Pogany says that *jogállam* translates more happily to the German *Rechtstaat*, "a concept which is more exacting than the rule of law doctrine" as more generally understood. Our point is that this is a principle predating the Hungarian constitution, one of many principles that a court or other political agency might call upon to justify political actions or prohibitions.

engaging in a deliberative process. Deliberation seems to be none other than the kind of arguing over principles as we have just described it. But what does deliberation add to the process of making decisions, particularly among rational actors? Democratic theorists claim that it consists not merely in bargaining over the gains from some policy decision, but in the pooling of information or the alteration of participants' basic preferences (for example Manin 1987, Warren 1992). Although we agree that deliberation is more than mere bargaining, we also find standard accounts implausible for reasons spelled out elsewhere (Knight and Johnson 1994).¹⁰ And as Waldron (1996: 2189) puts it, "In the real world, even after deliberation, people will continue to disagree in good faith about the common good, and about the issues of policy, justice, and right." What happens as a result of deliberation, if anything, is that decisions are legitimated in the eyes of the losers, and future decisions are implicitly limited by the arguments the winners have just made. Just as in the case of Elster's constitutional "argument", however, this poses the question: If deliberation is not the mere making of bargains, does not result in binding rules, and does not alter participants' basic preferences so as to eliminate conflicts of interest, then how can it have such effects?

Interpretation. Similar to arguing over precedent or principles in an ongoing constitutional system, participants are frequently called upon to interpret constitutional requirements whose application to a given situation are ambiguous. This is of course what constitutional courts are primarily designed for, but officials in all parts of government offer interpretations to justify actions they want to take or want others to take. This constant need for interpretation contrasts with Ordeshook's suggestion that a constitution settles the rules of procedure so that participants can concentrate on competing over political issues alone. On the contrary, the appropriate procedure to use is a frequent matter of dispute, through which participants often attempt to gain policy advantage.

It is easy to provide examples of such wrangling over the appropriate interpretation of constitutionally mandated procedures. During the long-running dispute over presidential powers under Polish Prime Minister Waldemar Pawlak's government, President Walesa asserted various rights to control the hiring of cabinet ministers, the firing of members of the National Board of Radio and Television, to control the military, and to dissolve the Sejm, based on what others regarded as tendentious interpretations of the provisional constitution; Walesa made some of these new powers stick, and in other cases issued threats based on his new powers in order to achieve policy goals (Osiatynski 1995: 40-41). In Romania, where each legislative chamber has the responsibility to make its own procedural rules but the Constitutional Court has jurisdiction over those rules, in 1994 the Court invalidated several such rules necessitating their revision by both chambers and momentarily threatening a constitutional crisis¹¹ (Bach and Benda 1995). One

¹⁰ Przeworski (1991: 17-18) also offers a compelling discussion of why deliberation cannot be expected, even in principle, to eliminate genuine political conflict in a democracy.

¹¹ The near-crisis was set up by the Court's 1994 ruling that the legislature's power to negate Court decisions applies only to cases in which the Court overturns laws, not to those in which it overturns

could object that these disputes over interpretation and thus over what procedures have been constitutionally agreed upon occurred in unsettled situations, where the constitutional agreement was not complete: Walesa's interpretations were predicated on infelicitous and ambiguous wording in the provisional Polish constitution, while the Romanian disagreement took place when the rules were first being ironed out and adhered, after all, to constitutional guidelines. But such disputes over procedure occur frequently in 200-year-old constitutions as well, as demonstrated by periodic executive-legislative confrontations in the United States.

To motivate a particular interpretation of a constitutional mandate, participants resort to extra-constitutional principles, to precedent, and to all sorts of arguments of similarity--the claim that a current situation resembles in important ways some other situation that is less ambiguously covered by constitution or by previous interpretation, and therefore should be treated in the same way.

When is coordination achieved? Hardin and Ordeshook surely make a conceptual advance over the contractarian model when they portray constitution making as a solution to a coordination problem. They clarify the level of enforcement needed to keep a constitution in place, and whence that enforcement must come. They also provide some flavor, missing from the contractarian picture of simple exchange, of how, in the terms quoted at the beginning of this paper, the transitional situation is "in flux" and "the very parameters of political action . . . arduously contested" without abandoning rational choice analysis.

Yet the static coordination analysis that Hardin and Ordeshook provide leaves no room for arguing, deliberation, interpretation, or the appeal to precedent. The intuition that the initial agreement on a set of constitutional procedures solves some sort of coordination problem is attractive; at least, that agreement focuses citizen and politician attention on a small set of possible effective actions. However, it does not complete the job of coordination. New situations are constantly encountered in which constitutional prescriptions are sufficiently unclear to be disputed. In attempting to gain the agreement of a sufficient number of participants about what procedure is appropriate, the disputants do not merely make offers or counteroffers, as in bargaining, about what procedure they would like to see implemented. Instead, they also adduce reasons why everyone should agree that in principle a given procedure is appropriate in this ambiguous situation. They interpret the meaning of the constitution for a given situation that was not anticipated by the framers or ratifiers. Even the losers in such a decision may find that interpretation legitimate. How are these interpretations left open by the initial coordination on a constitution? Can the form of that agreement influence the later interpretations? What role does interpretation play in the coordination problem posed by a new situation? To help us understand

chamber rules. The Judiciary Committee of the Chamber of Deputies voted to reject this interpretation, and proposed an override of several of the 1994 invalidations. Had the Chamber followed this advice, the status of those Chamber rules would have been in direct dispute. Fortunately, the Chamber acquiesced in the end. Bach and Benda (1995) provide an account of these events.

not only transitions but also the ensuing constitutional politics, we propose below a model that we think captures all these activities in a single conceptual framework.

The general theoretical problem

The survey that we present in the last section allows us to chart connections between several seemingly disparate observations regarding the indeterminacy of game theoretic analysis. At the same time it prompts us to stress the importance of explanatory mechanisms that seem, at first blush, not to fit neatly into a game theoretic framework but which are especially promising in strategic analyses of constitutional politics.

Kreps (1990a, 169f) discusses briefly the following simple repeated two-person game where, in each stage game, players are randomly matched and the value of payoffs X and Y are assigned randomly and independently of one another along the interval $[0,10]$.

Figure 5: A stage game with varying payoffs¹²

| | | | |
|----------|---|----------|------|
| | | Player 2 | |
| | | L | R |
| Player 1 | U | X, 5 | 1, 3 |
| | D | 2, Y | 5, 6 |

note: cell entries are payoff to player 1, payoff to player 2

In this ongoing interaction "there is zero probability that any game in the sequence is precisely the same as a game played earlier" (Kreps 1990a, 170). As a result, it is exceedingly difficult for players to establish with any confidence what might count as the sort of relevant prior experience upon which they might rely as a guide to developing reliable expectations regarding future play.¹³ This game underscores the extent to which game theorists typically assume "that participants in competitive situations have some notion of which situations are similar and which are not, a notion that itself is built up from experience" (Kreps 1990a, 172).¹⁴ Yet, as our discussion in the

¹² This is fig. 6.4. in Kreps (1990a, 170).

¹³ Kreps points out that in the sort of interaction captured by this model, even "sophisticated" conceptions of adaptive learning like that proposed by Milgrom and Roberts (1991) offer scant analytical purchase.

¹⁴ For a recent example that is relevant to our own concerns see Crawford and Haller (1990).

last section makes clear, in the context of constitutional politics this assumption is very nearly an heroic one.¹⁵ There we explained that since, even in the best of circumstances, past experience is far from unambiguous, players cannot assume that they share criteria of similarity and dissimilarity.

At this juncture game theorists will by now almost instinctively invoke the idea of a "focal point" (Schelling 1960). A focal point is an equilibrium outcome that players for some reason invest with special salience.¹⁶ It is not clear, however, that this notion provides much immediate assistance here. As Kreps correctly points out, any focal point itself minimally presupposes that relevant players share some criteria of similarity (Kreps 1990a, 172f). Game theorists have little to offer on that question. In particular they have little to say about just how focal points are created or about how they coordinate expectations (Kreps 1990a, 101). Focal points thus appear to present an "essential limit" on the explanatory power of game theoretic models (Myerson 1991, 113). Here, we confront a specific instance of a broader theoretical difficulty.¹⁷ Game theoretic models provide greatest purchase in the analysis of "closed universe" problems, that is, of circumstances "in which all the possibilities can be exhaustively enumerated in advance, and all the implications of all the possibilities explored in detail so that they can be neatly labeled." The difficulty is that most situations of interest in political economy - including the circumstances of

¹⁵ In fairness, theorists who rely upon repeated games acknowledge this difficulty. "Perhaps the most important shortcoming of the Prisoner's Dilemma supergame as a model of the process of public goods provision is that it takes place in a static environment: The supergame consists of iterations of the same ordinary game. In some of the public goods problems of interest here, a more realistic description of reality would require a *changing* payoff matrix, possibly a changing set of available strategies, and even a changing set of players. These changes, especially the first, might be the result of influences external to the game or of the history of strategy choices of the players themselves. . . . The possibilities here are very numerous, and it is impossible to make any general statements about the effects of extensions of this sort . . . These effects would depend very much on the particular manner in which the game changed over time" (Taylor 1987, 107-8). See also Calvert (1992, 12).

¹⁶ Myerson (1991, 112-13) points out that it is especially important to understand that focal points are complex causal mechanisms that incorporate both cognitive and motivational factors. They clearly trade upon some conception of salience that allows players to discriminate among the available equilibria and to coordinate on one among them. But focal points also pick out equilibria in the technical sense. Put otherwise, salience alone is not sufficient to induce a stable outcome, yet absent some focal quality the problem of multiple equilibria often resists analysis.

¹⁷ Another, related instance surrounds the way that players understand who are the relevant parties to a given interaction. Game theorists encapsulate such knowledge in the range of "types" that populate models of incomplete information. See Myerson (1991, 74-83). But, as is the case with focal points, they have little to say about where such types come from. On this issue see Johnson (1997).

constitutional politics - are "open universe" problems where such a prior and exhaustive enumeration and labeling of possibilities is implausible (Binmore 1990, 119-20,144,178). What we require, and what we currently lack, is some theoretical apparatus with which to understand how strategic actors interpret and label otherwise indeterminate interactions.

It may appear that this conclusion merely confirms the skepticism that, as we noted earlier, analysts of political economic transitions express toward standard social scientific analysis. That appearance is deceptive. For while we *currently* lack the theoretical apparatus that we need to understand social and political indeterminacy, there is no reason to conclude that this difficulty is insurmountable. It is true, of course, that game theoretic models presuppose that we can specify "precise protocols" (Kreps 1990a, 92-5). They presuppose, that is, that we can specify in a plausible way the rules governing the social or political interactions we wish to explain. This *obviously* limits the applicability of existing models. It does not, however, mean that we should abandon or deride efforts to extend existing game theoretic techniques in directions that might allow analysis of indeterminate situations.¹⁸ The hope here is not that game theorists actually might generate models that portray a fully "closed" world. The hope, instead, is that they might develop techniques that can usefully capture one or another dimension of indeterminacy or uncertainty and, in that way, enable us to more fully and confidently explain social and political interaction. That said, there is no reason to expect that game theory can accomplish this task single-handedly. It surely is the case that "certain things can only be expressed *informally*" (Binmore 1990, 119). Indeed, every extension of formal techniques very likely will demonstrate that the domain of those things is larger than we now appreciate. The challenge here is to develop informal analyses in such a way that they both draw upon game theoretic results and illuminate problems that are not amenable to game theoretic analysis. We turn now to some informal strategic concepts that hold out just that promise.

Informal Approaches

Kreps (1990b) surveys a large portion of contemporary economic theory with an eye toward examining how the strategic actors who populate that theory proceed in the face of the sort of "open universe" that we mention above. He focuses on the theoretical problems posed by "unforeseen contingencies." These are states of affairs that, for some reason, relevant parties *ex ante* fail to anticipate. Because such states are inevitable, Kreps argues that strategic actors necessarily will be compelled to formulate and convey to relevant others a set of general, simple and, therefore, easily interpretable principles to govern how the actor will react to unforeseen contingencies. Kreps calls this set of principles and the manner in which they are conveyed "corporate culture." By constructing a particular culture, a strategic actor at the same time provides herself with the components of reputation or identity, and others with grounds for reliable expectations about how she will proceed in indeterminate circumstances.

¹⁸ In this sense game theorists take the situation that we depict in the last paragraph as a challenge and a research agenda. See Kreps (1990a, 183-4) and Myerson (1991, 113-4).

Kreps makes two assumptions that, in combination, limit the scope of his analysis. In the first place he assumes that strategic actors are concerned less with distributive considerations than with coordinating in an efficient manner. This may be a reasonable assumption when analyzing market interactions. It seems strained, however, in analyses of politics generally and constitutional politics in particular.¹⁹ In the second place, Kreps does not discriminate sufficiently between two sorts of unforeseen contingency.

An unforeseen contingency is a set of circumstances that *ex ante* the parties to the transaction had not considered. Unforeseen contingencies need not be unimaginable: Individuals may simply be unwilling to spend time thinking through all possibilities, on the grounds that it is too time consuming and expensive to do so. Or it could be that the circumstances really are *ex ante* unimaginable. From the point of view of our development, either interpretation is fine (Kreps 1990b, 116-17).

These two sorts of contingency are not equivalent. In one case actors simply fail, for some reason, to assign a probability to a foreseeable event. In the other case, they simply never consider that event at all (Nelson and Winter 1982, 66-7). If we wish to recognize that constitutional politics is an "open universe," it makes a difference whether whether actors neglect contingencies due to oversight or costs or whether they are truly unforeseen. It makes a difference because if we treat contingencies as what Kreps calls "unimaginable" it is implausible to assume, as he does, that "unforeseen contingencies follow patterns," and hence that actors will accommodate them through some process of adaptive learning (Kreps 1990b, 117). Moreover, if we recognize that in constitutional politics strategic actors very likely are motivated as much by distributive concerns as by the goal of efficient coordination, we then see how, due to his own substantive preoccupations, Kreps underestimates the complexity of interpretive conflicts.

Ferejohn (1995) reports on joint research that extends Kreps in useful ways. He suggests that in most states the judiciary constructs what he calls an "interpretive regime" that consists in a general conception of government power and its limits and a set of informal "norms or conventions that regulate the interpretation of legal materials, including statutes" (Eskridge and Ferejohn 1994, 267). Like corporate culture on the account that Kreps provides, an interpretive regime allows judges to construct reputations or identities upon which other strategic actors, both in the legal domain and in the sphere of politics more generally, can formulate reliable expectations. In this sense interpretive regimes facilitate coordination. But, as Ferejohn remarks, "because they have far reaching political effects, these regimes are contested" (Ferejohn 1995, 205). There is, in short, no assumption that judges or other political actors are preoccupied with efficiency or that interpretive regimes rest on consent. When they construct an interpretive regime judges impose upon relevant constituencies a particular, partial, and typically contested

¹⁹ In any case, it is an empirical matter whether in any given case strategic actors are moved by efficiency or by distributive considerations. On this issue see Knight (1995).

conception of the political world - of its boundaries, of the sorts of actors who inhabit it and the range of options they confront, and, therefore, how we can expect political actors to interact.

Ferejohn (1995, 206-7) briefly identifies a sequence of interpretive regimes in American judicial history. Here we explore an emergent example from East Europe, the role of the constitutional court in post-communist Hungarian politics.²⁰ The constitutional court is an unprecedented component of the Hungarian political order (Paczolay 1993, 43-4). It has, in the post-communist period, been not only "extremely active" but "very controversial" (Schwartz 1993, 31).²¹ The Hungarian constitution provides for a very open system of abstract judicial review. Any citizen has the right to petition the Court to review any parliamentary enactment (Schwartz 1993). In the process of deciding these cases the Court has articulated an "interpretive regime" in just the sense Ferejohn suggests.²² This regime combines a deferential posture with regard to Parliament with a set of rule of law canons that center on particular conceptions of legal continuity and legal certainty (Klingsberg 1993; Morvai 1993-94; Paczolay 1993, 33-35). In part, the Court has adhered to this regime in a fairly rigid way in response to legal and political indeterminacy in the post-1989 period (Paczolay 1993). And because their rulings have important, far reaching political consequences, critics actively contest the interpretive regime that they have constructed (e.g., Sajo 1996b).

This conflict of interpretations emerges when we examine some of the court's rulings. In early cases, the court first overturned and then upheld legislation meant to impose "retrospective justice" on officials of the Communist regime. The court initially overturned as *ex post* and hence unconstitutional a bill that would have extended the statute of limitations on political crimes committed under the old regime (Morvai 1993-94). They argued that the rule of law incorporates a view of legal certainty that precludes retroactive legal changes. The court subsequently upheld a law that sought retrospective justice not by extending the statute of limitations but by invoking international law to which Hungary was signatory at the time that the alleged crimes of torture and murder were committed. In this way, the court encouraged the parliament to pursue its aims in ways that could be justified within the rule of law and to which the court itself could thereby defer. Observers discern this same pattern in cases involving property restitution and the transfer of the mass media from public to private ownership and control. On this view the court has imposed an interpretive regime that locates the proper source of political power in the parliament

²⁰ In a series of reports Arato (1994; 1995; 1996) provides useful background to our discussion.

²¹ "Since its establishment in 1989, it has dealt with scores of difficult problems including property restitution, the powers of the President, the legitimacy of capital punishment, and the suspension of the statute of limitations for homicide and treason committed during more than four decades of Communist rule" (Schwartz 1993, 31).

²² For a first hand account see the interview with the President of the Court, Laszlo Soylom, conducted by Mink (1997).

and encourages elected officials to articulate and justify their political programs in terms consistent with constitutional principles (Klugsberg 1993). Other observers, however, challenge the Court by claiming that its ruling in particular cases reflect narrow political preferences. This was one response to their ruling in the retrospective justice cases (Morvai 1993-94). It also informs criticism of a more recent decision that overturned legislation on welfare reform. Critics of that decision argue that the Court is imposing a view of substantive justice at odds with both economic reform and, more importantly, the formal requirements of the rule of law (Sajo 1996b). The court itself, however, insists that its decision to overturn provisions in the welfare reform bill that eliminate social welfare benefits simply reflects its commitment to legal consistency and legal certainty. It claims that, since citizens have developed expectations based upon premises of a certain level of welfare provision, legal certainty and continuity with earlier law precludes the government from suddenly rescinding those benefits (Mink 1997, 74). In essence, the Court defends its rulings in these various cases as consistent applications of the same interpretive regime.

4. A model of ongoing coordination

We attempt in this section to formalize some previously un-modeled features that should be present in a model of constitutional politics in order both to capture the coordination problem and to motivate the activities of arguing, interpretation, and deliberation. At present we are far from a formal analysis on a level with Crawford and Haller (1990) or Milgrom and Roberts (1991). What we want to establish here is: (1) a *prima facie* case that notions from rational choice theory, centering around the game theory of coordination and communication, hold promise of allowing us to theorize about the problems of constitutional transition about which Bunce and Csanadi (1993) and O'Donnell and Schmitter (1986) despair of applying received social science methods; and (2) a consistent account of the activities of rational actors in constitutional politics that explains the effort they seem to devote to arguing about principles in the process of inventing and interpreting constitutional doctrines.

Situated games

In order to conceptualize both the making of a constitution at the moment of transition, and simultaneously the need for argument, deliberation, interpretation, and appeal to precedent, we need to model not only the available actions and resulting payoffs captured by a traditional game-theoretic approach, but also the situation to which the game corresponds in the real world. Just because two completely different situations in the real world can be represented as identical coordination games between the same players, there is no reason to expect that those players, having achieved coordination in the first game, can easily translate their agreement to the second. The situations may look the same to the game-theorist, but not to the participants. Therefore instead of attempting to describe constitutional interactions merely in terms of coordination games, we need to portray each game not only as having different strategies or payoffs, but also as occurring in some specific physical or political situation. Rather abstractly, we characterize the situation in which each coordination game is played in terms of a "situation," a sort of label on the

game that is common knowledge among the players as soon as the game is drawn for play, but that may differ between two otherwise identical games. We shall refer to these as "situated games." Two identical games having different situations are strategically identical, but the fact that the players reach one of several equilibria in the first game may tell us nothing, theoretically, about which equilibrium they will reach, or expect to reach, in the second.

The Basic Model

For concreteness, we begin with a simple model of a two-citizen "society" facing a series of interactions in which each citizen is to choose between two alternative actions. The interaction at each period t , $t=1, 2, \dots$, is represented by a game G strategically identical to that in Figure 4. Think of each alternative action as a procedure that can be followed: to propose a law, to bring a case in court, to decide such a case in a given way, to vote on a bill, to impose an outcome by force, and so on. The alternatives also represent reactions to other players' actions: to implement a bill if passed; to obey a court decision; to vote against a candidate; to meet force with force; and so on. In a more realistic game with many players, including citizens and government officials, and with many more alternative actions for each player, the combination of actions and reactions chosen by all those players would resemble the processes of government under a constitution. In a given situation, if the actions of relevant participants are coordinated, the result is some policy outcome *and* the maintenance of political order, an expected ability to choose policy outcomes efficiently in the future. If those actions are not coordinated, political deadlock or disorder ensues, potentially making all players worse off even than if they had received an undesired policy outcome. The whole interaction would thus be an impure game of coordination, simplistically represented by the two-player game of Figure 4.²³

Unlike the game illustrated in Figure 4, however, we now consider each iteration as a situated game, with period t 's situation is described by s_t . Thus the games differ only in that they represent different situations; for simplicity of analysis we keep them strategically identical and maintain the assumption of complete information. Each s_t is a realization of a random variable s distributed on a set S of possible situations according to a probability measure m on S that is common knowledge.²⁴ The fact that each game represents a different situation makes it natural to assume that *only through the situation can connections be drawn* between the games played in

²³ Of course, in the real world there are situations in which some participants would prefer the risk of disorder over accepting the policy desired by others. To portray this problem of constitutional stability would require us to replace the game in Figure 4 with a stage game whose payoffs vary, which therefore might not always take the form of a coordination game. In this paper we retain the simpler model in order to concentrate upon the use of deliberation and interpretation to achieve political coordination when coordination is the *only* problem. There is no barrier in principle, however, to expanding this model to encompass the equally important question of how a constitution can be held together in the face of stronger conflicts of interest.

²⁴ That is, for any measurable subset A of S , $m(A)$ denotes the probability that s will be drawn from A .

different periods, and actions chosen accordingly. So, for example, the players can use a strategy that says, "in period t , we choose the actions (x,y) if $s_t=a$ and (y,x) if $s_t=b$." However, we rule out the strategy that says "in even-numbered periods play (x,y) and in odd-numbered periods, (y,x) ," and even rule out the simple strategy "always play (x,y) ." We impose this seemingly arbitrary restriction on strategies as a first attempt to address, in a tractable way, a world of recurring problems of coordination whose universal solution does not simply follow from the solution of a single instance of it. In terms of constitutional coordination, our formulation forces the players to agree, if at all, on a rule for taking specific combinations of actions in specific situations, independently of the strategic structure of the game.

Similarity relations among situations

In order to portray interpretation and argument in constitutional politics, there are, it seems to us, two alternative formal approaches we could now take. The first, most closely analogous to that taken by Crawford and Haller (1990), is to begin in a sort of state of nature with respect to communication and culture. In such a state, the players share no common ideas about how different situations or actions are labeled or related beyond what is distinguished by their preferences (that is, by the game-theoretic model's payoff values) and by their common experiences developed in the course of playing the game. In effect, there would be at the outset no "language" for political discourse, no shared principles or concepts at all, except as these emerge in the process of play. The analysis of such a model would be quite valuable, but also quite involved, and would go well beyond what we need to make our point in this paper.

The second approach, which we pursue, is to assume that the players share some pre-existing set of ideas about how one political situation might be considered similar to another, and a language for talking about these. In order to avoid baking the results in the cake, we will avoid assuming any particular form to these ideas, which should properly be termed "cultural." In all cases of real-world interest, cultural ideas are insufficient alone to fully, uniquely specify a constitution. We will assume, moreover, that there are multiple ideas about the similarity of situations, and that they may sometimes conflict; this leaves room in our model for competition over arguments and interpretations.

To portray, as abstractly, simply, and generally as possible, the cultural tools with which framers or politicians have to work in making arguments and interpretations, we consider binary relations that generate notions of "similarity" on the set S of situations. A similarity relation on S is a reflexive, symmetric relation R on S .²⁵ R is not necessarily transitive,²⁶ but for any two distinct situations r and s in S , we say that r and s are "similar" under R if there is some list of situations s^1, s^2, \dots, s^{n-1} such that $rRs^1Rs^2R \dots Rs^{n-1}Rs$. Suppose for some similar r and s that s^1, s^2, \dots, s^{n-1} is the shortest such list; then n is the "distance" between r and s according to R . If rRs

²⁵ That is, R is a subset of $S \times S$ such that for every s in S , (s,s) is always in R ; and for every r and s in S , (r,s) is in R if and only if (s,r) is also. We can write interchangeably $(r,s) \in R$ or rRs .

²⁶ That is, even if qRr and rRs , q and s may be incomparable under the relation R .

directly, their distance is 1; the distance between r and itself is always 0. If r and s are not similar, then we say their distance is infinite. If under the similarity relation R , the distance between r and s is smaller than the distance between r' and s , we will say that r is more similar to s than is r' according to R . In a setting of constitutional politics, the set of cultural tools on which the participants can draw for arguments is represented by a set \mathfrak{R} of similarity relations on S . Thus a pair of situations r and s may be judged similar according to some R in \mathfrak{R} but not according to some other R' in \mathfrak{R} ; or given three situations, r , r' , and s , r may be more similar than r' is to s according to their distance under R , but less similar according to their distance under R' .

Communication processes

In this paper we will deal only informally with the process of communication between the players, but let us sketch the sequence of events that we have in mind. We suppose that the repeated plays of G are interspersed with communication stages in the following manner. At period $t=0$, before s_1 has been drawn, communication between the players can occur according to some process C_0 ; and at each period $t=1, \dots$, after G_t has been drawn but before actions for period t have been chosen, according to identical processes C_t . The players receive no direct payoff and bear no communication costs in any communication stage. In each communication stage the players may make proposals about future play based on the realized values of the s_t or make claims about the implications of previous statements based on previous values of s_t .

Each communication process should afford participants the opportunity to suggest constitutional provisions or interpretations of constitutional provisions, and to state reasons or arguments in support of those suggestions. Most simply, we might model each C_t as a simultaneous-move game in which each player states a combination of actions such as (x,y) to be taken in the game whose situation is s_t , together with a relation R from the "culture" \mathfrak{R} by which s_t is similar to some situation that is explicitly covered in the constitution or that has already been dealt with successfully in some previous period. The available arguments themselves thus give each player a hint about what his or her partner might do. If the players suggest the same action combination in C_t , they might then proceed to play it in G_t ; if they state the same "argument" R , they might appeal to that reason again in the future. Thus they can establish a focal point in G_t as well as perhaps establishing a focal point for future actions and methods of interpretations--the kinds of argument, and thus the kinds of suggestions, that they will expect one another to give in the future. The players are engaged in multiple coordination problems at once, and their actions today may help solve tomorrow's problems. A richer model of the communication stage might offer the participants several opportunities, rather than a single opportunity, to exchange messages before G_t is played, and the opportunity to make and reject proposals in a real process of argument or bargaining.

If we give players in the initial communication stage C_0 the special opportunity to assign actions to many possible situations, then C_0 is a good opportunity for the players to try to sketch out how future games will be played, that is, to agree upon a constitution that specifies the actions each player will take in a wide array of the possible future situations s_t . We concentrate on the participants' problem of partitioning S into situations that call for (x,y) and situations that call for

(y,x). To do so, they can either delineate particular members of S, that is, particular situations, and prescribe actions in each situation; or they can invoke some of the culturally shared similarity relations R and prescribe actions for all situations in some set that are similar according to R. Formally, a constitution is a mapping that specifies, for each member of some set of situations, a specific coordinated pair of actions, either (x,y) or (y,x). Although we ignore for now the process of deciding how much time and effort to spend in attempting to elaborate and distinguish among future situations, even the most extensive constitutions in the real world can specify unambiguously only a fraction of the situations that political actors will actually encounter. We assume that some large proportion of S is left without any direct, unambiguous prescription of constitutionally-sanctioned procedures. For s_t -values in that leftover set, our formal model of a constitution does not specify any actions. In such cases, participants will have to argue in individual cases about what, if anything, the constitution prescribes.

Once a constitution is agreed upon, s_1 is drawn. Very likely s_1 is not one of the values specified in the constitution. If not, the players now face a coordination problem, trying to agree on a coordinated combination of actions to take in this situation. In the absence of such an agreement, they can simply play the mixed-strategy equilibrium. If they could use a common notion of similarity to agree on an applicable similar situation, they would achieve a higher payoff. Each player is tempted to argue that s_1 is similar to a constitutionally specified situation that gives him a better payoff. However, there is also an incentive to give up on pursuing one's "2 payoff" and accepting the "1 payoff," since agreeing not only provides a coordinated outcome in the current period, it also makes it slightly easier to coordinate in future periods, elaborating on the constitution by adding, via precedent, another situation value for which a pair of actions is prescribed.

Theoretical implications

The interesting equilibria in this game are those for which the following occur: (1) Players always follow constitutional prescriptions; (2) when both players suggest the same action combination during C_t , they both play in G_t according to that combination; and (3) when the two players suggest different action combinations in C_t and there is no constitutional prescription for that situation, the players use the mixed strategy equilibrium in G_t . In general such equilibria will exist--along, as usual, with many others. We conjecture with some confidence that, within this class of equilibria, there will moreover be some in which agreement upon previously given "arguments" influence future action suggestions and future arguments.

These equilibria exhibit precisely the processes of arguing, interpretation, and deliberation that appear in the substantive literature on constitutional politics. In designing a constitution, participants have the incentive to advocate and bargain over constitutional prescriptions based purely on the outcomes those prescriptions will yield, on average, if followed. This is the behavior that follows from the contractarian and simple coordination models, and it is maintained here. In addition, however, participants in constitution-writing in our model also have the incentive to state arguments for the provisions they advocate, in order to gain the support of other participants based not only on the results of future play in the named situations, but also based on

the possible future uses of that argument once it has gained currency and widespread recognition in the transition process. Finally, they have the incentive to combine these approaches, choosing arguments that strike a balance between attracting other participants' support and providing good outcomes for the chooser--in Elster's (1993a, 1995) phrase, the "strategic uses of argument."

In our two-person society, the value of having a constitution is seen most simply in the fact that, if a situation has a constitutionally specified action, then the less-well-off player in that period receives a payoff of 1, while the other gets 2; if the constitution's treatment of the two players is, probabilistically, even handed, then each player's ex ante expected payoff is 1.5 per period. However, if a situation is not covered by the constitution, then, in the absence of any new agreement, the players are stuck with the mixed strategy equilibrium, and their expected payoff is only 2/3. Participants are better off playing in situations for which actions have been prescribed. If they find themselves in situations where actions have not been prescribed, they have an incentive to coordinate on new prescriptions by drawing on shared notions of similarity or on precedents. There is a dual incentive to support the orderly extension of constitutional prescriptions by proposing and accepting reasonable arguments: first, because of the immediate gain in expected payoff, even for the "loser;" and second, because of the positive effect that agreement now will have upon the likelihood of agreement in the future. But these incentives do not guarantee agreement in every situation, due to the difference between the participants' preferences between the coordinated outcomes.

Thus it becomes clear in this model how a constitution amounts to a feat of coordination, even though it leaves more coordination problems in its wake. Without a constitution, citizens are without a good basis for forming widespread, implicit agreement about legitimate government action. The prescriptions of a constitution, together with the experience of having agreed on it, provide a basis for subsequent interpretation, deliberation, and agreement much richer than the pre-existing cultural notions of "similarity." The constitution "coordinates" in that it turns future situations of potential social conflict and confusion into derived coordination problems that are easier to solve. But the process of coordination, through interpretation and deliberation, is continuous under a constitution.

In our theoretical approach we have begun to take up the challenge posed by Binmore, Kreps, Myerson, and others concerning the limits to game theoretic analysis. Where do expectations come from? How do players in a political "game" come to share any common ideas about what the available "strategies" are? How, in general, can we take account of the "open universe" of possibilities and innovations while maintaining the kind of closed model necessary for formal analysis? Our general answer is that we push the closed-model assumptions back one more level in order to address one more level of social phenomena. We explicitly model communication, and assume that the content of that communication contributes to the expectations of a game's players about other players' subsequent actions. We assume a repertoire of similarity relations on which communicators can draw to lend appeal to their suggestions. This appeal is not just based on preferences, but also on expectations about others' expectations, and so on.

5. Implications

Our model of constitutional politics, like that of Hardin and Ordeshook, emphasizes how the making of a constitution centers around the problem of coordination. For a stable constitutional order to become established, participants and citizens must come to agree to a sufficient extent about the actions and reactions by political agents that are appropriate in each future set of circumstances they will face. Unlike previous analysts, however, we emphasize the fact that those future circumstances can never be fully anticipated.

Constitutional interpretation

This fact is no minor complication in the Hardin-Ordeshook view of coordination by constitutions. The actual framers of a constitution attempt to delineate categories of future issues and situations so that the constitution's assignments of responsibilities and powers will be clear, but framers know their prescriptions will be subject to interpretation as real situations arise. Political actors in those situations will always have to ask, "Does the current situation properly fall into this category or that one?" Since this will often be an open question, and since the answer will have policy implications that people have partly conflicting interests about, those future actors will have opportunity and motive to attempt to promote favorable answers to the question and discourage unfavorable ones. Even under a stable constitution, political actors will forever contend over competing interpretations of it.

In this competition over interpretations, the coordination problem that political actors face is precisely analogous to that faced by the framers themselves. The actors must agree to a sufficient extent about the actions that are to be taken; in the longer run, participants generally must agree to a sufficient extent about the interpretations that are being made, and the manner in which they are being made, if the constitutional order is to remain stable.

Arguing and bargaining

Throughout the process, the interpretations made and arguments accepted in one instance will influence future interpretations, and thus the future course of constitutional politics. Participants begin a constitutional system with common cultural factors--symbols and expectations with which all members of the society are familiar. These pre-existing conventions are useful in guiding coordination upon a new constitution, but were not alone sufficient to generate a political order. Arguments made and accepted at the time a constitution is framed become additional cultural resources, upon which people's expectations are known to have been coordinated already, and which can be used subsequently in motivating future arguments and interpretations. But the written provisions of the constitution are also insufficient to fully specify the terms of the political order. Thus politicians enunciate additional principles such as that of

avoiding "constitutional dictatorship"²⁷ and constitutional courts adduce new principles derived from, but not stated in, the constitution,²⁸ and draw on external sources such as international law and the legal doctrine of *Rechtstaat* to supplement their constitutional interpretations.²⁹

In our conception, for an argument or interpretation to be accepted by an individual it must (1) appear likely to be accepted to enough other people, and (2) promise a sufficiently favorable outcome to that individual, both immediately and through its future effects. Since all individuals concerned are simultaneously evaluating the likelihood of others' acceptance, we have a problem of establishing a focal point precisely as it was originally formulated by Schelling (1960). Argument and interpretation, are, in short, precisely problems of coordination. They remain forever under a constitution, although the constitution and previous arguments and interpretations may contribute toward the creation of later focal points.

Deliberation

We tend to believe that democracy really does involve some form of deliberation that is separate from interest-based bargaining. As we noted above, however, we reject the idea that deliberation is merely an exchange of information, or that it alters participants' preferences about policy outcomes. Rather, we believe that deliberation solves ongoing coordination problems. Successful deliberation creates common expectations about principles that rationalize a policy decision today, that are acceptable as general rules today, and that are likely to remain acceptable, and thus to remain influential in policy making, tomorrow. One might thus accede to, and even support, a policy bad for one's immediate interests in order to solidify a principle that will redound to one's longer-term interest. A principle can have this effect because it can influence the direction of future deliberation--because it creates future focal points.

Heresthetic

Riker (1986, 1996) introduced the notion of "heresthetic," analogous to rhetoric, to describe the art of strategically posing political issues in a way that forces people to support them, or that breaks apart coalitions that were based on previous formulations of ideological or policy alternatives. In some of Riker's examples, the desired result is achieved by the ordering of issues; in others, by the invention of effective vote trades. However, the purest form of heresthetic maneuver is one that gains support or changes coalitions because of the way it is stated, linking it with a different issue in such a way that others will find support or opposition newly compelling.

²⁷ As in the use of extraordinary majority requirements for proposing constitutional provisions in Hungary, as described in Arato (1994, 1995).

²⁸ Such as the Hungarian Constitutional Court's doctrines of "novation of old promises" (Klingsberg 1993) and "legal certainty" (Sajo 1996b), cited above.

²⁹ See the interview with Polish Constitutional Tribunal Chief Justice Andrzej Zoll in Grudzinska-Gross (1997).

This is a big part of what constitution framers are doing when they engage in Elsterian arguing, and what politicians do in the process of deliberation and interpretation.

Riker gives the perfect example from modern American politics. In 1970 the U.S. government proposed to remove nerve gas weapons from its bases in Okinawa and ship them back to the U.S. for storage or destruction. Senator Warren Magnuson maneuvered to prevent a plan to ship the weapons' through his state. Initial, insufficient support was gained on a straightforward proposal to ban such shipment, based simply on the potential danger the shipping posed to his constituents. To gain the needed additional support, Magnuson switched the subject from the danger of the weapons to a seemingly unrelated issue: the executive branch had made this plan to remove nerve gas weapons from Japan without consulting the Senate, whose consent is constitutionally required for international treaties. The plan was not, strictly speaking, a treaty. However, the Senate had recently passed a (nonbinding) resolution (in connection with Vietnam-War-era politics) stating that any negotiated change in the status of Japan under existing post-World War II treaties ought to be cleared with the Senate. The issue of Senate prerogatives in foreign policy making was therefore a hot one at the time. By making the issue one of constitutional prerogatives of the Senate rather than local public health and safety, Magnuson gained the necessary support (Riker 1986: 106-13).

In his heresthetical maneuver, Magnuson did not invent a new issue, or even make a connection that anybody else couldn't have made. But by stating the issue publicly, he turned the nerve gas shipments into a threat of precedent-setting that would weaken the Senate constitutionally, in a lasting way. Once his suggestion was in the public domain, many more Senators found it necessary to oppose the nerve gas shipments in order to maintain senatorial powers, and the shipments did not occur.

Riker called heresthetic "an art, not a science" (1986: ix) because, although he could describe what a heresthetic maneuver had accomplished after the fact using the tools of positive political theory, its employment by politicians depends on the invention of new ways of posing issues. Had he modeled the Magnuson maneuver formally, he would have presented it as the creation of a majority voting cycle, just as he did in many other cases (Riker 1982: 213-32; 1986: 58; 1996: 135). Its dependence on innovation, however, makes heresthetic difficult to theorize about directly. Our model of ongoing coordination in constitutional politics provides a new tool for examining heresthetic, namely doing so in terms of coordination and convention. Although we cannot predict the innovations and herestheticians will come up with, we can understand the process by which it works by examining how the manner of stating issues can substantially change people's choices on those issues. This was something of a gap in Riker's approach: if senators already had preferences concerning nerve gas shipments and the preservation of Senatorial powers, why should the rhetorical linkage of the two issues change anyone's voting behavior? The logic of ongoing coordination suggests where we might look for an explanation. Once the issues are connected, the connection has meaning for later episodes of deliberation and decision making on other issues. It affects the determination of future focal points.

Constitutional Instability

Unlike static coordination models of constitution making, our approach also affords some insight into what happens if some participants don't want to coordinate--that is, when constitutional stability is not a coordination game. Then instead of constitution-based arguing and deliberation, we'd predict acts of destabilization, not necessarily even through organized collective action, not necessarily through violence. These might include claims that previous government actions lacked constitutional legitimacy, or the urging of decision making principles based on ethnic ties and contradicting established constitutional rules. Anything that opponents can do to direct citizens' attention and expectations to possibilities working against reliance on constitutionally-grounded action will help prevent the development of focus on the constitution. Once a series of important decisions have been made flouting the constitution, it loses its focal quality. This is a familiar idea, of course, but its compatibility with our model speaks to the model's increased scope compared to the static coordination view.

Transitions

In view of this model of constitution making and constitutional politics, what new things can we say about transitions and constitutions? First, transition is a time when the principles by which appropriate political actions are defined are most up for grabs. Past means of guiding and legitimating political decisions are, by definition, no longer useful for a variety of reasons: they have been widely judged to yield unsatisfactory results, their enforcement agencies have been compromised, new issues have arisen that they manifestly cannot address, or new interests have gained a much greater level of influence; and, importantly, it has become common knowledge among political participants that these conditions hold. Under such conditions, old ways of thinking about government retreat to the status of other cultural factors: common knowledge principles, experiences, and expectations that may be used to inform new agreements, but that themselves are insufficient to maintain a political order. Although, as we have said, constitutional argument takes place constantly, it is densest when a new constitution is being framed, because prospective political actors need to establish a whole framework for future argument.

Second, we can clarify the role of interests or preferences in people's political actions under the conditions of great institutional uncertainty that characterize a transition. We began with the assumption that politicians and other citizens have fundamental preferences concerning the quality of their lives. If they are able to make sufficiently accurate predictions about the results of political actions, they may derive preferences over those actions. Such predictability requires a stable institutional setting. Finally, then, participants may derive preferences over alternate institutions. Constitutional decisions during a transition are based on these derived preferences; this is the basis of Elsterian "bargaining." As we have seen, though, a written constitution is but the basic outline of the constitutional system that will eventually emerge, so Brown (1994), Bunce and Csanadi (1993), O'Donnell and Schmitter (1986), and the other authors cited in our introduction have reason for their pessimism about whether transitional politics can be seen as a rational, a rationalizable, or an analyzable process. Our model should allay that pessimism. Since there can, after all, be a rationality behind arguing, deliberation, and

interpretation, we can hope after all to gain a unified understanding of both transitional and constitutional politics.

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