

Constitutional craftsmanship and the rule of law

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Abstract Is “rule of law” anything more than a fictional allusion? After all, “law” is an abstract noun, and abstract nouns can’t rule. Only people can rule. The conceptual framework of constitutional political economy invokes a central distinction between choosing rules and playing within those rules. Claims on behalf of a rule of law require a sharp distinction between the enforcement of agreed-upon rules and arbitrary changes in those rules. This paper explores whether there are constitutional arrangements under which it could reasonably be claimed that governance reflects a deep level operation of a rule of law despite the surface level recognition that it is men who rule. With the exercise of rulership being a social process and not a matter of individual action, the network pattern through which rules are enforced takes on particular significance. In particular, polycentric architectures are generally more consistent with rule of law than monocentric architectures.

Keywords Rule of law · Separation of powers · Constitutional political economy · Polycentrism · Constitutional drift

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“Rule of law” is a catchy phrase that points to an abstract object that might well lack substantive content. While the idea that everyone should be subject to law and

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