

The Lifespan of Written Constitutions¹

Tom Ginsburg

Zachary Elkins

James Melton

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I. Introduction

According to an old joke, a patron goes into a library and asks for a copy of the French Constitution, only to be told that the library does not stock periodicals. The joke feeds the Anglo-American habit of needling France, in this case suggesting a country with suspect democratic credentials, more concerned with fashion and form than substance. Yet France is more typical of national constitutional practice than the United States with its venerable 218-year old constitution. By our estimate, national constitutions have lasted an average of only seventeen years since 1789.³ This is an unsettling estimate of life expectancy for a document whose basic functions are to express guiding national principles, establish basic rules, and limit the power of government – all of which presuppose constitutional longevity.

Of course, the optimal lifespan of a constitution is not obvious, and in some cases there are very good reasons for a comprehensive review, if not replacement, of constitutions after some period of time. On balance, however, constitutions that endure should be more likely to promote effective, equitable, and stable democracy. With this background assumption, which we examine in more depth below, we explore the constitutional chronologies of nation-states in order to understand the origins and durability of constitutional systems. How durable are constitutions and what factors lead to their demise? In particular, our concern is whether aspects of the *design* of constitutions have any significant effect on constitutional durability net of other risk factors.

These questions are not merely of academic interest. Recent constitutional drafting exercises in Afghanistan (2003) and Iraq (2004 and 2005) have been central milestones of American foreign policy. Each of these efforts sought to solve particular institutional problems, with different levels of success.⁴ It is, of course, too early to say whether either of these constitutions will survive to adulthood, but circumstances do not appear propitious in either country. In a far less volatile context last year, the 1997 Constitution of Thailand—considered by many a model of institutional design adopted with extensive citizen participation—died a peaceful death in a bloodless coup at the age of nine (Harding 2001; Ginsburg 2007). Indeed, given our estimated mortality rates, it is likely that constitutional replacement will be under way at any given moment *somewhere* in the world. Understanding what leads to such instances, and in particular whether design choices matter, has the potential to inform a science of constitutional design (Horowitz 2001).

Any such epidemiological analysis requires an accurate historical census, a resource heretofore unavailable. As part of a large-scale research project, we have identified every major constitutional change – whether replacement, amendment, or suspension – in every independent state since 1789. We have also acquired the text for nearly every “new” constitution, as well as that for a large majority of amendments, and have recorded aspects of their design that our theory would predict to be relevant to constitutional longevity. Our

³ The median lifespan is only eight years, while the mode is a miniscule one year.

⁴ The particular approach of the Iraqi constitution—postponing most of the crucial decisions until after a post-constitutional election that the Sunni had no hope of winning—may have exacerbated the political conflict there. Meanwhile in Kabul, the new Afghan constitution, adopted in 2003, appears to be faring much better. Although the security situation is worsening as of this writing, President Karzai has exploited constitutional power to appoint governors to consolidate his hold on power and sideline numerous regional warlords who had been considered the largest threat to the country’s stability. One might see contrast these two cases by characterizing the greatest threat to the Afghan constitution as exogenous to the constitution, while the greatest threat to the Iraqi constitution is endogenous.

analysis suggests a revision of the conventional wisdom regarding constitutional (and, more generally, *institutional*) change. The common intuition – rarely tested systematically – is one of sticky institutions that are unstuck only by cataclysmic world events, such as wars and economic crises. We find that constitutions are, as suspected, vulnerable to such crises. However, important design and process elements can add tens of years to constitutional lives, perhaps allowing the charters to survive even these intense shocks. We show why this is so.

The paper is organized as follows. Part 1 discusses definitional issues surrounding constitutions. Part 2 takes a detour into normative arguments about endurance, motivating the empirical inquiry that follows. Part 3 draws on the literature on self-enforcing institutions to lay out a theory of constitutional endurance. Part 4 discusses the data and a model, and Part 5 presents our results. Part 6 concludes.

II. Conceptualizing Constitutions

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We can move towards a definition by identifying exactly what it is constitutions do. Arguably, the most important (and defining) attribute of constitutions is that they limit the behavior of government. That is, they generate a set of inviolable principles to which future law and government activity more generally must conform. This function, that of constitutionalism, is vital to the stability of democracy. Without a commitment to higher law, the state operates for the short-term benefit of those in power or the current majority. Those who find themselves out of power may find themselves virtually unprotected, which in turn may make them more likely to resort to extra-constitutional means of securing power. By limiting the scope of government, constitutions make government possible (Sunstein 2001; Przeworski 1991; Weingast 1997). A second function that constitutions serve is the symbolic one of defining the nation and its goals. A constitution operates as a device that declares the legitimacy of the perhaps fledgling or rudderless state. This function is particularly important for young states whose citizens have strong ethnic or communal identities that may compete with their loyalty to the state. A third and very practical function of constitutions is that they define patterns of authority and set up government institutions. Even a dictatorship needs established institutions through which to govern. (While the mere process of defining an institution involves *some* constraints on its behavior, these are conceptually distinct from *substantive* limits on government action incorporated into the notion of constitutionalism).

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We identify constitutions in the data that follow by a set of three conditions. The first is sufficient to qualify the document as a constitution, while the others are alternative sufficient conditions if the first is not met. Constitutions are those documents that either:

- (1) are identified explicitly as the “Constitution,” “Fundamental Law,” or “Basic Law” of a country; OR
- (2) contain explicit provisions that establish the documents as *highest* law, either through entrenchment or limits on future law; OR

- (3) change the basic pattern of authority by establishing or suspending an executive or legislative branch of government.

This set of conditions is similar to that used by Elster (1995: 364) and helps us to resolve problematic cases.⁵ For example, in the Israeli case, we treat the constitution as the series of Basic Laws (condition 1), even though all are passed by ordinary parliamentary majority and thus do not meet condition 2 and few of them meet condition 3. In the case of Saudi Arabia, the holy Quran is the highest law and there is no formal constitution; however, we treat the three 1992 Royal Decrees establishing the basic system of government, provinces and the consultative majlis (assembly) as constituting the government (Aba-Namay 1993). This is a case that meets condition 3 but not 1 or 2. Fortunately, at least for analytic purposes, formal constitutions are the norm and defining a state's constitution is largely straightforward.

To conduct the analysis we have collected data on the constitutional history of every independent state (as identified by Gleditsch and Ward 2006) from 1789 to 2006.⁶ For each country, we record the promulgation year of *new*, *interim*, and *reinstated* constitutions, the year of *suspension*, and the year of any *amendments* (defined below). The promulgation of new, interim, and reinstated constitutions marks the beginning of *constitutional systems*; these systems end when replaced by another new, interim, or reinstated document or when they are formally suspended. This definition of constitutional lifespan has the virtue of clarity, although it may err on the side of formalism in cases in which a constitution ceases to be effective as a practical if not legal matter. Our census reveals a universe of 792 new constitutional systems, of which 518 have been replaced, 192 are still in force, and 82 have been formally suspended, ultimately to be replaced. We have collected the constitutional text for 652 new constitutions and the text or summary information for 1223 out of the 1677 amendments, from which we construct several variables of interest.

In our formulation, the distinction between an “amendment” and a “replacement” is important. We call a constitutional change an “amendment” when the actors follow the amending procedure of the existing constitution and a “replacement” when they undertake revision without following such procedure.⁷ Thus, the U.S. Constitution is a replacement and not an amendment of the Articles of Confederation, as initially envisioned, precisely because the founders ignored their original charge and its accompanying procedures. Of course, we should note that “replacements” and “amendments” are sometimes only nominal distinctions. Some countries (e.g., South Korea) thoroughly revise a constitution with a set of amendments,⁸ while others (e.g., Afghanistan in 1990) make minor changes to a document and yet christen a new constitution. In general, however, new constitutions reflect a significantly more extensive overhaul compared to amendments. Across a set of 92 attributes from our data on the characteristics of constitutional texts and their amendments, replacement constitutions correlate with their predecessor at 0.53 while documents following a year of amendments correlate at 0.98 with the pre-amendment document.

⁵ Our definition differs slightly from that of Elster's recent draft *Unwritten Constitutions*, which makes regulation of ordinary law the crucial condition. Our definition is shared by Negretto (2006:5) however.

⁶ Gleditsch and Ward (2006) catalog the existence of states from 1816-2006. For the years between 1789 and 1816, we use data about the birth of states from the Issue Correlates of War Project, or ICOW (Hensel 2006).

⁷ For events whose exact process is unclear, we rely upon the nominal classification as it appears in historical texts, a classification that likely matches our criteria.

⁸ South Korea's six republics have each involved complete constitutional overhauls adopted through the formal process of amendment of the previous constitution.

Reconstructing constitutional chronologies for all independent states is not a simple matter and we rely upon a collection of cross-national, regional, and country-level sources in order to compile the data. The magisterial *Constitutions of the Countries of the World* (Flanz and Blaustein 1971-present) provides invaluable background information for most countries. Other useful cross-national and regional sources include Maddex (2001), Fitzgibbon (1948), Peaslee (1950-1971), and the Political Database of the Americas at Georgetown. Of course, country-level studies are at the root of these multi-country sources and we use these more specific studies when possible (available).⁹

III. The Merits of Constitutional Longevity

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[*Editors' note:* Here, the authors review the merits of constitutional longevity. The arguments for the periodic renewal of a constitution, such as those espoused by Thomas Jefferson, are evenly matched by the arguments for constitutional endurance, like those iterated by James Madison. However, when other evidence is considered, the authors suggest that longevity wins out. The formation of institutions requires some degree of habituation to a constitution such that an organic relationship can develop between the institutions and the constitution. Indeed, the authors note, “[t]hese processes take time” (p. 8 in full draft). Equally important, the institutions grow-up within the confines determined by the constitution. Thus, too many changes to the foundational rules could promote quick-fix institutions developed by opportunistic elites seeking short-term benefits (p. 9 in full draft). Additionally, long-lived constitutions provide a better opportunity for developing a shared national identity through the symbolic role of the constitution (p. 9 in full draft). And last, but certainly not least, the authors highlight evidence that suggests that an enduring constitution promotes both economic growth and democratic stability. Recognizing that the evidence is not yet determinative, particularly with regard to the causal relationship between constitutional longevity and economic and democratic growth, the authors ultimately argue that there is a strong suggestion that efforts to improve the longevity of constitutions are well placed.]

IV. Why might Constitutions endure?

The heart of our inquiry is to understand why some constitutions endure and others do not. We assume that constitutions are bargains among elites that are meant—at least by their authors—to be enduring. They vary widely in their level of inclusion. Many constitutions are crafted by a small set of leaders in a back room. Others are inclusively generated and endorsed enthusiastically by the public in a referendum.

⁹ While we are confident that we have identified nearly all “new” constitutions in the world, it is quite possible that we have overlooked a fair number of amendments, especially older ones, simply because they are less well-documented.

IV. 1. Constitutions as Coordination Devices

We share the view, articulated clearly by Hardin (1989), Przeworski (1991), and Weingast (1997), that successful constitutions serve as coordination devices that render their underlying political bargains self-enforcing, meaning that they must be equilibria from which no party has an incentive to deviate. Self-enforcement is important because, unlike normal contracts, there is in most circumstances no external guarantor who will enforce the constitutional agreement, independent of the parties. Even though constitutional bargains may have relative winners and relative losers, they will endure to the extent that the losers either (1) believe they are better off within the current constitutional bargain than in taking a chance on negotiating a new one; or (2) are unable to overthrow the existing order.

Stability of the bargain depends on the winners upholding the commitments and limitations embodied in the constitution, so that they do not provoke losers to resort to extra-constitutional action. In democracies, enforcement of these constitutional limitations ultimately relies on citizens (Ordeshook 1992; Weingast 1997, 2005). If they can coordinate, citizens can prevent the government from imposing costs on them and violating the political bargain. If they cannot coordinate, democracy may not be stable, as the government will continuously adjust the bargain in its favor with political acquiescence. The coordination problem is that citizens, having disparate interests, will be unlikely to reach agreement on their own as to what constitutes a violation of the constitution, and on when and how to enforce the bargain. A willingness to stand against the government requires a belief that others will join the citizen; otherwise the potential protestor will fear ending up in jail while oppression continues. When all citizens coordinate their expectations that others will join in the protest, however, the expectations become self-fulfilling and government will refrain from violating the bargain.

Written constitutions can assist citizens in overcoming the coordination problem by providing a definition of what constitutes a violation by government, thus providing a focal point for enforcement activity (Carey 2000; Strauss 2001, 2003: 1731-35; Samaha 2008: 50). By stipulating the rules and defining violations, they increase everyone's perceived likelihood that others will join them in enforcing against violations. Hence "parchment barriers" may matter, not because of any magical power contained in their words but because their role in facilitating coordination on the part of potential enforcers. This framework helps us understand why *written* constitutions may be important components of constitutional democracy: they provide the focal point for coordination and enforcement. As Strauss (2003: 1719) has noted, it is sometimes more important than matters be settled than that they be settled right.¹⁰ The written text serves as a focal point for coordinating, eliminating potential disagreements and providing a structure for future interaction. The framework also helps us to understand why constitutional democracy is so rare in general: resolving the coordination problem among citizens to enforce limits on government behavior is extremely difficult, and the mere presence of a written constitution is no guarantee that coordination will in fact occur.¹¹

¹⁰ The quote is attributed to Justice Brandeis, *Burnet v. Coronado Oil and Gas Co.*, 285 U.S. 383, 496 (dissenting).

¹¹ This function, of course, need *not* be played by a written text. It is perfectly possible that common understandings of the constitution will focus on unwritten norms as opposed to the written text. It may also be the case that understandings of the text deviate significantly from the clear meaning of the words. The important thing is that coordination does in fact occur, whatever its origin. But a writing will help citizens to

IV. 2. Sources of Incompleteness

Even if a constitution is self-enforcing at its birth, it may not remain so. This section draws on the literature of incomplete contracts to try to understand the pressures for constitutional renegotiation. A central problem for constitutional endurance is that, although the constitutional bargain may be an optimal arrangement for the parties at the time it is drafted, it may not remain optimal at some future time (Ordeshook 1992).

Suppose we have three groups, which we will call Sunni, Shiites and Kurds. The Shiites are a numerical majority. They would like a constitutional arrangement in which they dominate the other groups, but have to choose between crude force and inducing the others to join in a constitutional arrangement. The latter is preferable for a variety of reasons: international legitimacy, economic stability, and security, for the smaller groups have the capacity to engage in some level of violence if their demands are not met.

Each group comes to the negotiating table to bargain. The bargaining process is costly, because it requires negotiation and the expenditure of political resources. (Furthermore, each bargainer must be concerned with ensuring that his supporters can be delivered, a problem we set aside). The parties at the table will conclude a bargain or not, based on an expected stream of benefits to particular groups net the transaction costs of negotiation. In the example above, it is likely that the Shiites will get the lion's share of the spoils, but will also have to provide enough benefits to their smaller counterparts to induce them to choose to abide by the constitution.

Should they conclude a bargain, it will of necessity be incomplete, in that the parties will be unable to specify every future contingency.¹² One reason it will be incomplete is the familiar one of transaction costs of negotiating terms of a deal. Parties that seek to specify every contingency will never conclude an agreement. Beyond the costs of negotiation, we focus on two types of obstacles to specifying a complete constitutional contract.

First, there is uncertainty about future payoffs, which may vary with exogenous factors. For example, every country is embedded in an international environment over which it lacks complete control. The international environment is particularly fickle; its one enduring feature is "persistent uncertainty." (Koremenos 2005). New technologies are invented, new threats emerge, and new powers arise that affect the costs and benefits of cooperation *within* states. These factors can influence the relative payoffs to parties to the constitutional bargain.

Suppose, extending my earlier example, that the Shiites are the majority, but the Kurds are geographically concentrated in an oil-producing area. In bargaining, the Kurds are concerned that the Shiites will dominate the country's politics and so negotiate a provision that oil taxes will be locally administered and retained. The Shiites agree and the bargain is concluded. However, a year after the adoption of the constitution, world oil prices fall as a result of the perfection of hydrogen technology. Kurdish revenues decline precipitously and

agree on what constitutes a violation, memorializing the unwritten understandings that are what in fact sustain political society.

¹² See also Persson et al. (1997) (arguing that the separation of powers scheme provides a mechanism to create default rules to fill gaps.) There is an odd argument in that it does not seem to recognize that agreements are negotiated by parties, not powers. They also fail to consider gaps in the separation of powers scheme itself. See also Gillette (1997) (incomplete agreements in the federalism context).

the relative wealth of the two groups diverges, with the Shiites becoming richer and Kurds are poorer. The Kurds now face pressure to renegotiate.¹³ Exogenous change means that even endogenously stable constitutions may come under pressure for renegotiation. Our examination of constitutional histories confirms that constitutions frequently appear to die because of exogenous shocks, such as wars, regime change, and shifts in the boundaries of the state.¹⁴

Another source of incompleteness is awareness of one's negotiating partner's type. This is the problem of hidden information. A party to constitutional negotiation may misrepresent her own endowments and intentions for strategic reasons.¹⁵ Suppose, in the example above, the Shiite ethnic group does not have accurate information on the extent of oil deposits in the territory of Kurdistan. It negotiates the revenue deal expecting to obtain sufficient funds for its needs from customs and other revenue sources. After the constitution is adopted the Kurds gradually reveal that the amount of oil was in fact much higher than anticipated and as a result local revenues will be greater than those obtained from all other sources combined. In this example, hidden information led to a miscalculation of relative costs and benefits. One can imagine that if the miscalculation is severe enough, the Shiites will seek to renegotiate the deal.¹⁶ Even if they do not, the difference between expected and actual revenue streams may eventually increase Kurdish power to the point where they are in a position to demand a better overall deal. Thus hidden information at the time of drafting can exacerbate pressures on the constitution later on.

In general, time has different, and probably offsetting, effects on the problems of hidden information and exogenous shocks. As parties interact in performing the terms of the constitutional bargain, they are likely to reveal information to each other more fully than can be done in the bargaining phase. They may even develop the constitutional equivalent of a "course of dealing," a set of informal norms that supplement their formal arrangements. As time goes on, information on the "type" of partner they have is likely to increase. The problem of hidden information is particularly severe in the first period of constitutional performance, and we have many examples of constitutions that die in their first year of operation, particularly in the context of failed peace agreements. On the other hand, time exacerbates the problem of incomplete information associated with exogenous change. Future contingencies grow more difficult to predict with time, as more and more exogenous factors arise and interact with each other in complex ways. Thus we should see that problems of exogenous shocks increase over time, while those of hidden information decrease over time. We set aside the specific tradeoffs, assuming that they more or less cancel out.

¹³ More closely related to the discussion of international factors, one can imagine that rising military pressures from a proximate neighbor (Turkey) might induce one group (the Kurds) to be more dependent on the power of their co-nationals, and affect the division of the constitutional surplus.

¹⁴ See *infra*, section 3.6. Our initial inquiry suggests that financial crises are not generally sufficient to overturn constitutions.

¹⁵ See generally Ian Ayres and Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 *YALE L.J.* 87, 100-103 (1989).

¹⁶ A related source of incompleteness, that we do not address in detail here, is bounded rationality. As the quote from Madison above illustrates, writers on constitutional drafting processes frequently invoke "passions" as an issue to be grappled with. There is a fear that the heat of the moment could lead the drafters to make poor choices, or be unable to accurately calculate costs and benefits. Elster (1995); Sunstein (2000). If cognitive biases lead parties to underestimate future benefits and overestimate costs, a deal will not be struck at all. But in the reverse situation, parties will conclude a bargain they are then disappointed in, and seek to renegotiate.

IV. 3. Why Standard Solutions Do Not Work

One standard answer to the problem of incomplete information is to write loosely defined contracts that allow flexible adjustment over time as new information is revealed. The parties will be able to specify performance within general parameters in light of changing circumstances. There is, however, a well known risk of moral hazard from such loosely specified contracts. If performance is not precisely specified, one might claim that circumstances have changed in order to take a greater share of the constitutional surplus. Indeed, knowing that this is a possibility down the road, a party might seek to conceal its intentions and endowments from its constitutional partners during negotiation. Trying to address the problem of incomplete information through drafting flexible “framework” constitutions, then, may exacerbate strategic problems of hidden information.

The reverse is also true. A standard response to the problem of hidden information is to write a more complete agreement specifying contingencies. By forcing the other party to reveal information during negotiation, one can minimize strategically generated surprises down the road. But this solution to the problem of hidden information, in turn, exacerbates the risk of rigidity in the face of exogenous change. The more one tries to solve one problem, the more one exacerbates the other. Constitutions that can solve the problem of hidden information while remaining flexible would seem to have a significant advantage.

Another standard solution to problems of hidden and incomplete information is to rely on third parties. Analogizing to contract law, one might imagine a theory of constitutional review in which the courts seek to correct bargaining problems down the road (Scott 2003). In such a case, the role of the court would be to provide default rules that reflect its understanding of the position the parties would have bargained to, should they have had all the information at the time. In contract theory, courts playing this role can provide a disincentive for negotiating parties to hide information from the other party.

There are significant problems, however, with expecting courts to be able to play this function for constitutions. First, there are capacity issues in which the courts may be unable to determine what the appropriate rule is. Second, in the constitutional context, no matter what decision the court makes, the relevant parties still face the second-order decision as to whether or not to comply with the court decision. That is, there is no guarantee that the decision will be followed and there is no external enforcer of the court decision. One must thus return to the incentives of the parties to understand constitutional endurance. Finally, the assumption that constitutional courts are able to correct bargaining problems of hidden information is problematic because courts are not automatically granted the power of judicial review. Indeed, the existence of a constitutional court is itself the product of the constitutional negotiation, a term over which parties will bargain (Ginsburg 2003).

To summarize, two sources of uncertainty, caused by variance in exogenous parameters and by strategic incentives to hide information, mean that parties are unable to produce a complete constitutional contract. For each of them, information revealed later in time may affect the parties’ perceptions of the arrangement, putting pressure on bargains that may have been self-enforcing at the time they were written.

IV. 4. Renegotiation and Breakdown

In considering whether to renegotiate, parties will consider their position in the current bargain, comparing it with expected outcomes of a constitutional renegotiation. Change in the constitution, however, is not costless. Amendment processes vary widely in their difficulty and complexity, and this will be a factor that affects a decision to seek to change the terms. We discuss this further below. Even more costly than amendment is total replacement, which is typically more costly because there are more issues to bargain over, and putting all the issues on the table renders the bargaining results less predictable *ex ante*.¹⁷

If the expected payoff of constitutional renegotiation (conceived of as the set of all possible alternatives multiplied by their probabilities of obtaining, less negotiation and switching costs) exceeds the current stream of benefits, parties will opt for renegotiation. Once a party seeks renegotiation, it must consider what means to use. Here the constitution itself comes into play, for it will typically have provisions to amend its terms. There are two primary mechanisms by which constitutional change occurs: formal amendments to the text, and informal amendments that result from interpretive changes. We expect that flexibility in these mechanisms of amendment will facilitate renegotiation.

Sometimes, however, infra-constitutional means of adjustment may be unavailable. This may be because a counter-party controls crucial institutions such as the legislature or courts that are necessary for formal or informal amendment. In such circumstances, the party may simply transgress the constitution and see if other parties acquiesce. Here the logic of coordination takes over. If the citizens or opponents can coordinate among themselves, they can refuse the proposed change by enforcing the terms of the constitution. In these instances, the original constitution survives, enforced. If coordination does not occur, the constitution may be replaced.

Consider as an example an executive who wishes to extend his term in power, a frequent scenario well illustrated by recent events in both Venezuela and Pakistan. The executive may be induced to seek an extended term by his own thirst for power, or because of external shocks such as military crises that disrupt the constitutional equilibrium, rendering it prohibitively costly for the executive to work within constitutional limits conceived under more stable conditions. Having made the decision to extend his term, the executive has two choices regarding his treatment of the constitutional order. One option is to retrofit the constitution to his current behavior, either by amending the constitution or securing an interpretation of it that is favorable to his transgression. A second option is to bypass the constitution either by declaring the current constitution null and void and commissioning its replacement or suspending it, formally or informally, in order to act without any constitutional limitations. Extra-constitutional action, by either replacement or suspension, results in constitutional death, although in cases of *informal* suspension, we might think of the constitution as persisting unresponsively on life support.

The decisions of whether or not to act within the parameters of the constitution and, subsequently, which specific intra- or extra- constitutional action to take depend on the executive's expectations of the enforcement of constitutional limits by others. An expectation of strong enforcement will affect the executive's decision up and down the decision tree. If constitutional transgression is likely to be contested, the executive might decide to forgo transgression altogether, thus maintaining the original equilibrium. Similar

¹⁷ Thus we expect that the costs of renegotiation increase with the scope of the current bargain.

considerations also enter the calculus as to *how* to modify existing arrangements if that path is chosen. Given an expectation of strong constitutional enforcement, the executive will prefer to remain within the constitutional order, choosing to retrofit the constitution to accommodate her transgression through amendment or interpretation rather than to suspend or kill the constitution. In situations of low enforcement, in contrast, it may be easier to replace the document than it is to alter it, regardless of how low the amendment or interpretation costs may be.

To summarize, this model of constitutional transgression leaves us with three general propositions regarding the lifespan of constitutions.

- (1) Strong *enforcement* mechanisms will decrease the probability of transgression *and* extra-constitutional replacement;
- (2) External shocks and crises will increase the probability of transgression, as will characteristics of the state that lead to such crises; and
- (3) Conditional on transgression, easily *adaptable* constitutions will decrease the probability of replacement.

These are general expectations, of course, and in the next sections we turn to the specific mechanisms of crisis, enforcement, and adaptation in order to understand the processes in more detail and to generate specific hypotheses regarding observable risk factors.

V. Investigating Mortality: Shocks and Structure

Our theoretical framework implies a set of general propositions that we specify more fully here. Analytically, it is useful to organize risk factors into three categories. Constitutional lifespans will depend on, (1) the occurrence of shocks and crises (*precipitating events*); (2) structural attributes of the constitution, namely its detail, enforceability and its adaptability; and (3) structural attributes of the state.

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V. 1. Precipitating Causes of Constitutional Death

We have rather strong intuitions about what sort of events would destabilize constitutional systems. They should be those that significantly alter the balance of power within either the regime or the state. It is not hard to assemble a list of such events, as they constitute the milestones of a state's political history. Because we are interested in testing the explanatory power of these events against that of more structural factors, we prefer to err on the inclusive side with respect to such a list. For this reason, and for sheer historical curiosity, we reviewed the constitutional histories of all countries to inductively generate a set of immediate factors that lead to constitutional demise.

* * *

[*Editors' note:* The authors identify and discuss six factors leading to constitutional demise: (1) Military subjugation; (2) State mergers and secessions; (3) Diffusion; (4) Regime change; (5) Leadership transition; and (6) Institutional crisis.]

V. 2. Structural Sources of Constitutional Resiliency

The shocks that we describe above threaten the existing political order and undoubtedly have some effect on the lifespan of constitutions. Our crucial question concerns the degree to which underlying structural factors play a role in mortality. In particular, do aspects of constitutional design play a decisive role? Our theory suggests that constitutions need to resolve problems of hidden information, provide incentives for enforcement (particularly by citizens), and also need to provide for flexibility in the face of exogenous pressures. We expect that the *specificity* of the document, the *inclusiveness* of the constitution's origins, and the constitution's ability to *adapt* to changing conditions will be important predictors of longevity. We also expect that a set of structural conditions associated with the state render the constitutional system more or less stable. A set of factors that we do not consider, at least at present, are the functional provisions of constitutions (e.g., the nature of executive-legislative relations, federalism, rights, etc.).

VI. Constitution-level Structural Factors

Specificity. One strategy that can help constitutions survive is to try to anticipate relevant sources of pressure and deal with them in the constitutional text, more fully specifying the constitutional bargain. It is particularly helpful with regard to solving problems of hidden information among the bargainers. By forcing counter-parties to consider various possible future shocks and scenarios, the drafters can minimize problems of strategic behavior and hold-up once the constitution comes into effect. We thus predict that specificity will be associated with constitutional survival. We use the term specificity in a general manner: we conceptualize it as involving not only detail with regard to particular terms, but also scope of the type of events the constitution covers. A broader scope of the constitution also indicates a certain amount of investment by the parties in negotiation, which may raise the prospective cost of re-negotiation.

Inclusion. It is very clear that constitutions throughout the world are treated with varying amounts of respect by citizens and elites alike. For some countries (e.g., the United States), the document is an important symbol of sovereignty and statehood; for others (e.g., many Latin American constitutions of the 1800's), the constitution is of considerably lesser stature. In part, the connection between legitimacy and survival is reciprocal: framers and citizens will be more attached to a legitimate document and documents that survive will in turn engender norms of attachment. Our theory suggests a further reason: constitutions whose provisions are known and accepted will more likely be self-enforcing, for common knowledge is essential to resolving coordination problems (Chwe 2003). This suggests that inclusion in the process of producing the constitution will help ensure enforcement by the public or other relevant actors.

There are two critical stages of the process, the writing and the approval stages, in which the degree of inclusion is manifest. With respect to the writing process, an extreme

case of secrecy might be Burma's current efforts. There, the military government has commissioned a constitution from a group of hand-picked authors (excluding members of the opposition party that won 80% of legislative seats in the last election) and cloistered the assembly in a remote location outside the capital. Of course, a degree of privacy can be quite useful under some circumstances (as scholars have noted of the Philadelphia convention), and documents arising from private settings may be legitimate as long as the group assembled is adequately representative (Elster 1991). In cases in which important factions are excluded (or, as is sometimes the case, exclude *themselves* as Sunni leaders did during the drafting of Iraq's 2005 document), legitimacy is severely compromised. The case at the other end of the spectrum from Burma may well be that of Brazil in 1987-88. The Brazilian constitutional convention was characterized by extraordinary public involvement, including the submission of citizen proposals, the result of which was one of the longest constitution in the world. It is an unwieldy document to be sure, but a highly legitimate one, and has endured significantly longer than has the typical Latin American constitution. The approval process can be just as important as the deliberative stage. Ratification by a non-rubber-stamping public or by an elected body that is inclusive or representative of the public confers legitimacy. Moehler (2007) reports survey evidence from a set of African cases that suggests that constitutions that are ratified by public referendum enjoy higher levels of legitimacy. Two specific hypotheses follow from this logic of enforcement and legitimacy. Constitutional durability should increase with the level of public inclusion during both (1) drafting stage and the (2) approval stage.

Adaptability. As described above, exogenous change puts pressure on constitutional bargains. The ability of a constitutional system to adapt to changes in its environment will determine whether it remains in equilibrium. There are two primary mechanisms by which constitutional change occurs: formal amendments to the text, and informal amendment that results from interpretive changes. To a certain extent, these mechanisms are substitutes. If the methods of securing formal amendment are difficult (as in the United States, with its requirements of ratification by $\frac{3}{4}$ of state legislatures) there may be pressures to adapt the constitution through judicial interpretation. Ackerman's well-known account of constitutional change in the 1930s in the United States draws on such logic (Ackerman 1992). If, on the other hand, formal amendment is relatively simple, there may be less need for judicial or other institutional reinterpretation of the constitution.

Optimal adaptation thus results from the interaction of amendment rigidity and the possibility of reinterpretation of the constitution. The optimal level of flexibility is not universal, but determined in any particular constitutional situation by both exogenous factors (such as the rate of technological or environmental change) and endogenous factors (such as the level of responsiveness of political institutions under the constitution, and the level of inclusion at the outset of the constitution scheme.) A rigid constitution that fits its society well at the outset may be suitable if the rate of technological or environmental change is low. But the same constitution may perform poorly if change is rapid.

Constitutions that lack either flexible formal amendment processes or effective mechanisms of informal reinterpretation may not adapt to changing environmental conditions. We predict that such constitutions will force actors to take extra-constitutional action to secure changes and will thus die young.

VII. State-level Sources of Constitutional Resiliency

We expect that some state environments will be more conducive to constitutional survival than others. One set of such factors, of course, includes those that promote stability by mitigating internal conflict among groups. Such factors will sometimes be manifest in the crises that we specify above, but they likely affect constitutional lifespans directly as well. Without going very deeply into their theoretical moorings, we can specify several stabilizing factors that seem clearly relevant. One is the *age of the state*, with the expectation that older states have a stronger sense of national unity and have achieved some degree of accommodation among conflicting groups (whether they be culturally or politically based). One can conceive of older states as having a more established set of unwritten constitutional conventions that will allow for adjustment over time, and provide some insulation when shocks put pressure on the written bargain. Another factor may be the *level of development*. Notwithstanding a mountain of more nuanced theory and evidence regarding the relationship between development and regime change, a basic empirical finding is that development tends to stall political change, in whatever direction (Przeworski et al., 2000). One can think of development as indicating that current constitutional arrangements are successful at providing a stream of benefits to various players, such that their absolute status is more secure under the current bargain than it would be under alternative arrangements. Transition costs are also likely to be higher in richer environments, as the opportunity costs of negotiating basic principles are greater. Finally, *ethnic heterogeneity* is likely to promote instability, inasmuch as political competition often falls along ethnic lines. A large literature on ethnic conflict points to the difficulties of institutional design in such environments (Horowitz 1991, 2000).

VIII. Analytic Methods, Measures, and Data

We now return to our historical census to test the implications of our account with data on the characteristics of these constitutions, historical crises, and state-level predictors.

* * *

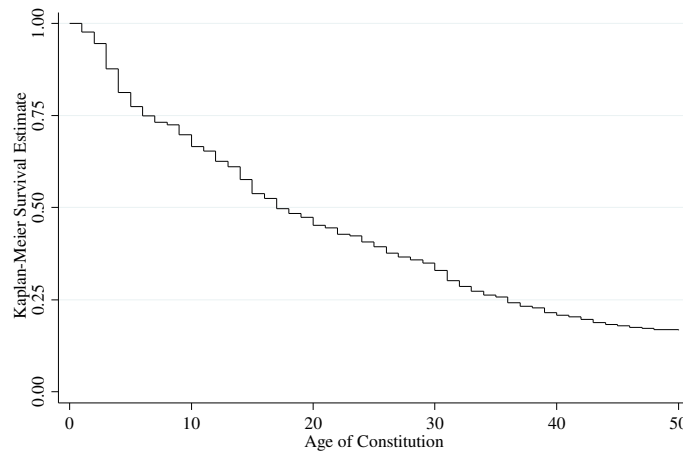
[*Editors' note:* The authors provide a full description of their methodology, addressing issues related to estimation, the measurement of independent variables, and the treatment of precipitating factors and structural factors.]

IX. Results

IX. 1. Baseline Estimates

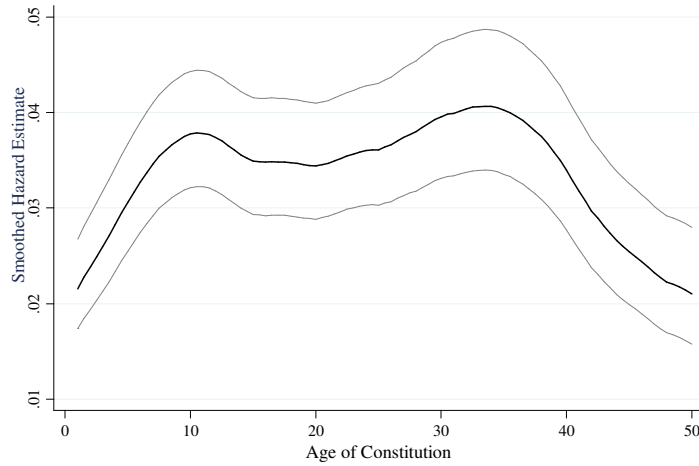
Constitutions, in general, do not last very long. The mean lifespan across the world since 1789 is 17 years. The survival curve in Figure 3a provides a better sense of life expectancy. Interpreted as the probability of survival at a certain age, the estimates show that one-half of constitutions are likely to be dead by age 18, and by age 50 only 19% will remain. Infant mortality is quite high — a large percentage, approximately 7%, do not even make it to their second birthday. Also, we see noticeable variation across generations and across regions. For example, Latin American and African countries fit the joke of the French-constitution-as-periodical much better than does France itself. The mean lifespan in Latin America (source of almost a third of all constitutions) and Africa is 12.4 and 10.2 years, respectively, with 15% of constitutions from these regions perishing in their first year of existence. Constitutions in Western Europe and Asia, on the other hand, typically endure 32 and 19 years, respectively, and their lifespans are the least skewed. OECD countries have constitutions lasting 32 years on average, suggesting a development effect analogous to its well-known relationship with democracy. Finally, unlike the trend of improving human health, the life expectancy of constitutions does not seem to be increasing over the last 200 years. Through WWI, the average lifespan of a Constitution was 21 years, versus only 12 years since.¹⁸ Of course, the various explanatory variables in our model are represented in different proportions within these historical eras, so a general inference of progressively shorter lifespans would be premature.

Figure 3 Survival and Hazard Estimates
a. Kaplan Meier Survival Estimate



¹⁸ Again, we note that these survival estimates account for right-censored cases.

b. Smoothed Hazard Estimate



Does the hazard rate (i.e., the probability of death) increase, decrease, or stay the same throughout the lifespan? Recall that we expect multiple competing effects of time, and are agnostic about their combined effect. Figure 3b plots the hazard rate (with 95% confidence intervals) over time. The hazard rate is an estimate of the probability a constitution will die at a certain age conditional upon its survival to that point, and represents the slope at each point in Figure 3a. We restrict this analysis to the first fifty years of a constitution's life, after which only 25% of constitutions remain and our confidence intervals are quite large. The two-humped shape suggests that constitutions are most likely to be replaced around age ten and age thirty-five. However, the risk of replacement is relatively high during most of this period, and it appears constitutions do not begin to crystallize until almost age fifty. Small samples do not allow us to describe the relative risks to those over fifty, except to emphasize that even these hardy seniors are not immortal. Sweden's constitution lasted 165 years only to be replaced in 1974 (Congleton 2003).

IX. 2. Estimates of Risk Factors

Table 2 presents the estimates from a Weibull model; semi-parametric models (such as the Cox Proportional Hazard) deliver approximately the same results. We report the hazard ratios, in which values over one should be interpreted as increased odds of constitutional demise and values below one as reduced odds. We include three models: one restricted to precipitating causes, one to structural factors, and one incorporating both sets of variables.¹⁹

¹⁹ It might seem sensible to estimate separate models for democratic and authoritarian regimes. However, our theory would not predict there to be differences across regimes. Moreover, when we have estimated separate models based on regime-type, the effect of several precipitating factors varies by regime-type (e.g. internal crisis and conflict triggers new constitutions only in democratic regimes), but the effect of the structural factors is substantively the same.

Table 1. Predicting Constitutional Duration

| | Precipitating Factors | Structural Factors | Full Model |
|-----------------------------------------|----------------------------------|-------------------------------|---------------------|
| Defeat in War | 1.23 (0.20) | | 1.52** (0.25) |
| Gain of Territory | 1.09 (0.25) | | 1.12 (0.26) |
| Loss of Territory | 0.79 (0.23) | | 0.89 (0.26) |
| Global Diffusion | 0.99*** (0.00) | | 0.99*** (0.00) |
| Neighborhood Diffusion | 1.15*** (0.02) | | 1.12*** (0.03) |
| Democratic Transition | 1.02 (0.02) | | 1.02 (0.02) |
| Authoritarian Transition | 1.06*** (0.02) | | 1.09*** (0.02) |
| Coup | 3.37*** (0.40) | | 2.21*** (0.27) |
| Change in Effective Executive | 0.76*** (0.08) | | 0.83* (0.09) |
| Conflict Index | 9.51** (8.62) | | 45.17*** (47.55) |
| Public Ratification | | 1.43** (0.25) | 1.41** (0.25) |
| Public Ratification X Democracy | | 0.91* (0.05) | 0.91* (0.05) |
| Indigenous Character of Constitution | | 1.20 (0.31) | 1.04 (0.27) |
| Democratizing Constitution | | 0.99 (0.02) | 0.96** (0.02) |
| Ease of Amendment | | 0.04*** | 0.05*** |

| | | | |
|---------------------------------------|----------|---------|---------|
| | | (0.00) | (0.00) |
| Constitutional Review | | 0.56*** | 0.57*** |
| | | (0.08) | (0.08) |
| Legal Tradition | | 0.85 | 0.92 |
| | | (0.11) | (0.13) |
| Specificity | | 0.17*** | 0.26** |
| | | (0.10) | (0.14) |
| Ethnic Heterogeneity | | 2.56*** | 1.96*** |
| | | (0.49) | (0.38) |
| Economic Development | | 0.17 | 0.04** |
| | | (0.26) | (0.07) |
| Level of Democracy | | 0.99 | 0.99 |
| | | (0.01) | (0.01) |
| Age of State | | 0.66 | 0.65 |
| | | (0.34) | (0.34) |
| 1919-1944 | | 1.31* | 1.25 |
| | | (0.19) | (0.19) |
| 1945-Present | | 1.49*** | 1.72*** |
| | | (0.18) | (0.27) |
| Observations | 12454 | 12454 | 12454 |
| Number of Countries | 185 | 185 | 185 |
| Number of Constitutional Replacements | 571 | 571 | 571 |
| Log Likelihood | -109.581 | -79.242 | -4.865 |
| AIC | 243.162 | 194.484 | 65.731 |

Odds ratios reported; standard errors in parentheses

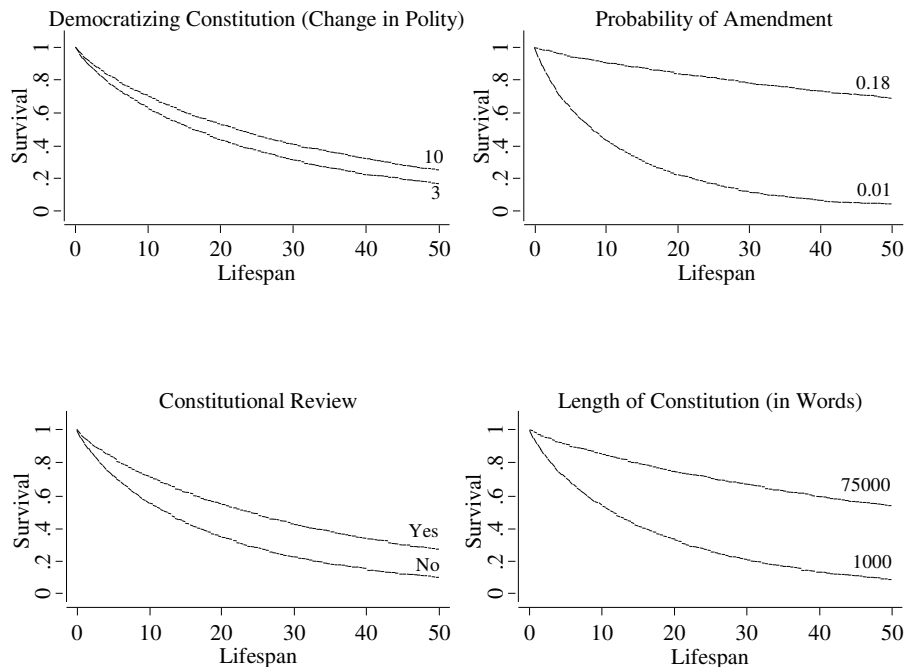
* significant at 10%; ** significant at 5%; *** significant at 1%

The overall model statistics suggest that both the structural and shock factors are important predictors of mortality. The chi-squared statistics from a comparison of the log-likelihood of the full model with those of the shock-only or structure-only models are large and highly significant (148.754, d.f.=11 and 209.432, d.f.=14, respectively). Most of the effects in either of the shock-only or structure-only models are borne out in the full model. Not surprisingly we see at least partial support for our hypotheses concerning a number of politically salient precipitating factors. All of these coefficients are signed in the expected

direction, except for global diffusion, whose effect is negative and significant in the full model. (The effect of neighborhood spatial lags, however, is as expected). Only three precipitating factors have coefficients that do not reach statistical significance (gain and loss of territory and democratic transition).

We find that several internal features of the constitution are strong predictors of durability, in accordance with our theory. In terms of *inclusion*, public ratification produces more enduring constitutions in democracies, but not in autocracies. This is intuitive: referenda in dictatorships do not genuinely confer legitimacy or facilitate collective enforcement of constitutional terms. We find that constitutions written in democratizing times are more resilient when precipitating events are included in the model. The most influential variables are clearly constitutional review and the ease of the amendment process, both of which decrease mortality. *Adaptability*, it appears, is crucial for constitutional survival. Figure 4 explores the size of these effects for several variables. In the case of amendment ease, an easily amended constitution (one whose probability of amendment is one standard deviation above the mean) has 70 percent chance of lasting until age fifty versus 13 percent for those whose amendment probability is estimated at one standard deviation below the mean. Consistent with our expectations (and contrary to the findings of Berkowitz and Clay) we find that longer constitutions are more durable than shorter ones, suggesting that *specificity* matters.

Figure 4 The Effect of Select Variables on the Survival Rate



Among the structural variables, several findings stand out. Ethnic fractionalization and wealth (as captured through energy consumption) have effects in the predicted directions (increasing and decreasing mortality respectively). We find no effect for common law, consistent with our own intuition and contra the well known results in the law and finance literature. We also note that the trend towards shorter lifespans over the two hundred years remains even after we control for a full set of covariates. Constitutions adopted from 1919-1944 are more vulnerable than are those adopted in earlier periods, and those adopted in the post-1945 period are more fragile still.

X. Conclusion

Our analysis of the constitutional life cycle leads us to think of constitutions as rather fragile organisms. Indeed, the average citizen outside of North America and Western Europe should expect to see her country cycle through six or seven constitutions in her lifetime. That estimate, of course, will depend on general levels of stability in any particular country. Those states that are the setting for crises such as war, internal violence, and coups should experience more frequent change. However, over half of the world's constitutions survive even these major shocks, prompting our inquiry into the internal characteristics that may support resilience.

Enduring constitutions share three important qualities that date back to the circumstances of constitutional birth. First, durable constitutions tend to emerge under conditions characterized by an open, participatory process – conditions that encourage enforcement of constitutional terms. Second, durable constitutions tend to be specific, inducing the parties to reveal information and to invest in the negotiation process. Third, durable constitutions tend to be flexible ones, in that they provide reasonable mechanisms by which to amend and interpret the text to adjust to changing conditions. These findings have natural implications for constitutional design.

Participation in constitutional design is a topic that has generated a good deal of literature, much of it from a normative and theoretical point of view. Inclusive processes of constitutional design are assumed to promote values of deliberative democracy and generate more legitimate constitutions. Participation, however, can occur at various stages and through different modalities, ranging from public input at the early stages of drafting to ratification by referendum (Widner 2007). There has to date been virtually no comparative empirical examination of the effects of different models. Our result, though limited to public involvement in the approval stages of constitutional adoption, suggests that some of the claims of proponents of participation are meritorious and worthy of further exploration.

Our findings on the effect of specificity of constitutional texts contrast with earlier analyses drawn from U.S. state experience. Our theory is that more detailed bargains indicate sunk cost investment by the parties in the constitutional text and therefore relatively higher switching costs to produce a new bargain. Specific documents may also be particularly helpful for resolving strategic problems of hidden information during negotiation, preventing breakdown early in the constitution's life.

Formal flexibility of the constitution has an intuitive relationship with endurance. Our finding that formal flexibility is helpful for constitutional survival, however, seems to cut against the basic assumption that constitutions work through entrenching certain policies

beyond the sphere of ordinary politics. When combined with our result on specificity, we come to the counter-intuitive conclusion that constitutions work best when they are most like ordinary statutes: relatively detailed and easy to modify. We do not, of course, know whether there are significant *political* constraints that protect constitutional documents or provisions from frequent modification in practice. But our finding suggests that there are serious and perhaps underappreciated risks of brittleness in a world of constant change.

We close with a caveat. Although we believe that endurance is helpful, particularly for new democracies, we do not assert that the observed rates of mortality are sub-optimal across all cases. Evaluation of the optimal level of mortality requires examination of particular constitutional histories, work that would complement the large-n approach pursued here.

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