The Lifespan of Written Constitutions

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The Lifespan of Written Constitutions

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1. **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 captures a typical Anglo-American view of France as 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 217-year old constitution. By our estimate, national constitutions have lasted an average of only sixteen years since 1789. 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. 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

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1 This paper is part of a larger project to understand the origins and characteristics of written constitutions, both past and present, for most independent states (http://netfiles.uiuc.edu/zelkins/constitutions). We gratefully acknowledge the support of the Center for the Study of Democratic Governance at the University of Illinois and the National Science Foundation, Award No. SES-0648288. One component of the project is the collection of data on the characteristics of constitutions for most states in the world, beginning in 1789. The data will be useful in understanding the origins and consequences of constitutions. In particular, we will be able draw inferences about learning and diffusion based on observed similarities across Constitutions. We also plan to examine the different kind of political circumstances that give rise to different constitutional schemes. In order to define the sample for this project, we have identified the promulgation dates of all constitutions and major amendments for the countries in the sample. Those constitutional chronologies are our focus in this initial paper.

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

3 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.
bloodless coup at the age of nine. 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).

2. CONCEPTUALIZING CONSTITUTIONS

What is a constitution? The flood of institutional research in the social sciences over the last two decades has expanded and diluted the concept somewhat. For many, constitutions have become shorthand for political institutions more generally (e.g., Persson and Tabellini 2004). Recent written constitutions such as Brazil’s 1988 document, which attempt to constitutionalize nearly every aspect of public life, have not helped to circumscribe the definition. Other countries such as Britain and, until recently, Saudi Arabia, have unwritten or uncodified constitutions. To add even more confusion, countries like New Zealand and Canada accumulate a set of important documents over a period of years until at some point, scholars determine that the collection is too important not to be a constitution.

It is also the case that in any constitutional system the language of constitutional text is modified and interpreted by political actors. In the United States, for example, judges of the Supreme Court have filled in the details of the vague 18th century document to make it suitable for modern life. They have done so notwithstanding the lack of explicit textual basis for constitutional review. In other countries, political practices may evolve and be accepted as “constitutional” even if never written into law. The scope of the unwritten constitution poses daunting challenges to comparative research.

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 functioning 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

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4 On the Thai Constitution, see Harding (2001); Ginsburg (2007).
5 In some sense, this echoes the view of Dicey (1960:23): “Constitutional law, as the term is used in England, appears to include all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the state.”
6 For a catalog of New Zealand’s Constitution, see Palmer 2006.
7 Of course, the vast majority of countries have discrete documents that the average observer would recognize as Constitutions. Our focus is on written constitutions (see also Elster 1995: 365). We undertake this decision for pragmatic reasons, but also because written constitutions are discrete intentional acts of institutional design, and hence of qualitatively different character than gradual interpretive adjustments, even if their formal status and practical impact are identical. On Unwritten Constitutions, see Thomas C. Grey, Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought, 30 STAN. L. REV. 843 (1978); Larry Kramer, Foreward: We The Court, 114 HARV. L. REV. 4, 16-32 (2001) (describing “customary constitution” in Anglo-American tradition; see also Seth Kreimer, Rejecting “Uncontrolled Authority over the Body”, The Decencies of Civilized Conduct, the Past and the Future of Unenumerated Rights, 9 U. PA. J. CONST. L. 1 (2006).
government possible (see Przeworski 1991 and Weingast 1997 for a broader discussion of this rationale). 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 otherwise 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, for example, 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).

It is this last function of defining authority that creates another ambiguity. In many countries, a parallel set of “organic laws” or “institutional acts” also define institutions. Are these documents constitutional? In some sense, yes, in that they play a constitutive or constitutional function. In a critical sense, however, they are not at all constitutional. For one thing, they are usually not adopted in the formal and often deliberate manner that typically (although certainly not always!) characterizes the process of constitution making. More importantly, even in those countries where organic lawmaking is entrenched, they can usually be abrogated more easily than can a constitution. This idea of entrenchment is an important contributor to the status of the constitution as higher law. We see constitutions as not only being higher law (a characteristic that they may share with organic acts and other rules) but of being highest law.

In short, it is important to distinguish between “Big C” Constitutions and the “little c” constitutional structure of a country. Our focus is on the former. The latter might include rules setting up fundamental political institutions, such as electoral systems, or authoritative interpretations of the written constitution such as supreme court decisions. While in theory these “constitutional” rules ought to be analyzed as well, the conceptual difficulty of determining the precise scope of the small-c constitution, as well as the methodological challenge of identifying and locating the various acts that compose it, argue against using it for comparative analysis at this stage. However, in the empirical analysis that follows, we do attempt to take into account the possibility of judicial amendment of the constitution through interpretation.

We identify constitutions in the data that follow by a set of three conditions, any one of which is sufficient to qualify the document as a constitution (see also Elster 1995: 364). 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 it as highest law, either because it is entrenched or limits 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 helps us to resolve problematic cases. 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.

Of course, in practice, constitutions can be used more narrowly to announce political programs of the leaders rather than serve as constraints on government (Nathan 1988).
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.9

To conduct the analysis we have collected data on the constitutional history of every independent state (as identified by Ward and Gleditsch) from 1789 to 2005.10 For each country, we record the promulgation year of “new” or “interim” constitutions and the year of any amendments. Of course, one should note that “new” constitutions and “amendments” are sometimes only nominal distinctions. Some countries thoroughly revise a constitution with a set of amendments,11 while others will make minor changes to a document and then christen a new constitution.12

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).13

Our definition of the lifespan of a constitution is the period of time between its entry into force and either its suspension or its formal replacement by another constitution.14 This definition has the virtue of clarity. Alternatively one could examine when a constitution ceased to be effective as a practical matter. This, however, would require a way to measure consistently the practical impact of constitutional provisions. We might, at some point, be able to obtain data to allow us to make such judgments over all countries since 1789, but at this point prefer the simpler definition as it is easier to operationalize.

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9 The United Kingdom is excluded from the scope of this project.
10 Ward and Gleditsch identify the existence of states from 1816-2002. For the years between 1789 and 1816, we use data about the birth of states from the Issue Correlates of War Project (ICOW), and for years after 2002, we extended Ward and Gleditsch’s codings three years (the only change being a merger between Sergia and Montenegro).
11 An example is South Korea, whose six republics have each involved complete constitutional overhauls adopted through the formal process of amendment of the previous constitution.
12 Afghanistan’s 1990 constitution adopted after the end of Russian military occupation is a good example here. This constitution served to demonstrate the incumbent government’s legitimacy and power after the loss of foreign support, but there are few, if any, substantive differences between the new and old documents.
13 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.
14 This is also the definition used by Negretto (2006: 5) in his parallel study of recent Latin American constitutions.
3. THE MERITS OF CONSTITUTIONAL LONGEVITY

Before examining the causes of constitutional longevity, we must briefly consider the normative question: how long should constitutions last in a democracy? For those who use the American document as the standard, the answer may well be “forever.” Surely, however, longevity is not desirable as an end in and of itself. Constitutions are designed to stabilize and facilitate politics, but there is certainly the possibility that constitutions can outlive their utility and create pathologies in the political process that distort democracy. Such constitutions surely deserve replacement. One can even make a plausible case, as Dahl (2001) and Levinson (2006) have, for a comprehensive review – if not abrogation -- of the bargains struck in Philadelphia in 1787. Such a move would suit Thomas Jefferson, who famously derided those who “look at constitutions with sanctimonious reverence, and deem them like the arc of the covenant, too sacred to be touched.”15 Indeed, by Jefferson’s standards, our estimate of an average life expectancy of sixteen years is hardly troubling.16 Jefferson’s indictment against endurance has a strong basis in democratic theory. To the extent that the will of succeeding generations is checked by the decisions of their predecessors, enduring constitutions come at the expense of representation. Moreover, it is possible that more frequent constitutional turnover would engender greater levels of civic participation and engagement, as citizens are called on to consider and deliberate over fundamental principles more frequently.

What enduring constitutions sacrifice in terms of representation, they more than make up for with respect to stability, equality, and governability. Indeed, these outputs are, in our mind, of utmost importance for developing democracies. It is instructive to consider the role of endurance with respect to the three functions that we ascribe to constitutions: establishing the basic structure and rules of governance, delimiting the powers of the state, and serving as a symbol of national unity and sovereignty. In the first case, it seems quite clear that simply stipulating the organization and relationships among governing institutions is not enough to ensure their implementation. A certain degree of habituation and routinization must occur before the institutions can take shape. Such habituation takes time. Furthermore, many of the crucial political institutions that make for effective governance—including the Central Bank, interest groups, or political parties—may not be mentioned in the constitution at all. Longevity allows these critical institutions to develop in a stable environment. The Mexican Constitution of 1917, one of the more progressive documents of its time, never matched the de facto politics of that country until the 1940’s and did not deliver political competition until amendments in the 1990s. One of the reasons that the US Constitution “works” is that American political life has grown around it and adapted to its extremely idiosyncratic edicts. This sort of stability of the rules, as long as they are reasonably democratic, can have a very positive effect on political equality, not to mention rule of law.

Consider the second function of constitutions: that of constraining political power. Constitutions, to the extent they are meaningful, restrict sovereign power especially in times of crisis when the incentives for absolute

15 Letter to Samuel Kercheval, July 12, 1816.
16 Jefferson believed that every constitution expired after nineteen years, a figure he based on when a majority of adults alive at any one time would turn over according to European life expectancies. Thomas Jefferson to James Madison, 1789. ME 7:459, Papers 15:396.
power are strongest. Tying actors’ hands with respect to the rules of the game compels them to compete with more democratic methods. Periodic changes in the fundamental rules, on the other hand, can encourage opportunistic elites to engineer institutions for their short-term benefit. If citizens are the ultimate enforcers of the constitution, as we argue below, longevity may be helpful in that citizens learn over time what the document requires, and develop a stock of cooperation useful for enforcement.

Finally, consider briefly a constitution’s function as national symbol. In democracies without a monarchy to serve as the symbol of the state’s sovereignty and national history, documents such as the constitution are important in that they strengthen national identity. A strong attachment to the state, whatever its pathologies, is critical to democracy. This is especially a concern in multiethnic states in which the state competes with other groups for loyalty. If citizens do not have a commitment to, or cannot agree on, the sovereignty of the state, then the very basis for participation and citizenship unravels (Rustow 1970; Linz and Stepan 1996). As Dahl (1989: 207) puts it, “the criteria of the democratic process presuppose the rightfulness of the unit itself.” In states in which commitment to the state is in question (e.g., contemporary Iraq), an enduring constitution can become an important source of national unity.

Our own view on the merits of longevity is an instrumental one. Enduring constitutions are useful to the extent that they produce other valuable goods, such as democratic stability, observed limits on government behavior, and economic growth. The problem is that we cannot appeal to any systematic evidence from the literature in favor of any of these propositions. Indeed, despite the massive volume of work on the endurance of democratic regimes, the relationship between constitutional duration and democratic stability or wealth is virtually undocumented. While it is beyond our mission in this paper to assemble such evidence, it seems worthwhile to examine some of the basic empirical associations between constitutional duration and these other goods that seem desirable. If our normative intuitions are even remotely sound, one should see an empirical relationship between constitutional duration and both economic development and democratic stability. We provide some suggestive evidence. (Note: we exclude the United States in the following discussion as an outlier).

Constitutional Duration and Investment: First, consider foreign investment. We divide constitutions into two groups, those lasting longer than the mean lifespan of 16 years and those which do not. Foreign direct investment (FDI) averages $US1.54 billion/year for constitutions lasting longer than 16 years and only $US0.38 billion/year for constitutions lasting less than 16 years. Looking at the bivariate relationship, Figure 1 presents data on the average FDI for all countries with a constitution of a particular age. Figure 1 confirms that short-lived constitutions are not associated with high levels of investment, but also suggests the relationship is not linear. Rather, there is some threshold beyond which constitutions must endure in order to provide the necessary stability to attract foreign investment, but returns do not continue to increase after that point. We also understand that it is

17 Another literature, dating back to Weber (1977), suggests that constitutional stability may provide the necessary predictability for capitalism to flourish, in which case we ought to observe a correlation between constitutional duration and long-term investment.
18 FDI data is from the World Development Indicators published by the World Bank (2000). The World Bank gathered FDI data for more than 100 countries, on average, each year between 1970 and 2000.
19 The mean FDI for age zero uses data from all 783 constitutional systems, but the mean FDI, or polity score, for ages 165-173 only use data from one constitutional system (Belgium_1832).
difficult using this evidence to have confidence in the causal relationship—no doubt constitutional stability is also a product of investment as well as a cause. Nevertheless, the correlation is sound enough to suggest that our normative intuitions that understanding longevity is worthwhile.

Figure 1 here

Constitutional Duration and Democratic Stability: Figure 1 also shows the relationship between constitutional duration and democracy, using the Polity scores as a metric.\(^{20}\) Again, we see a strong dissociation between short-lived constitutions and democracy. Once over a certain threshold, however, the relationship ceases to be linear (though it is more so than FDI). This suggests, again, that some constitutional duration does matter for producing democracy.\(^{21}\)

Democracy is different from democratic stability. From a rather broad perspective we should expect that countries with a high degree of constitutional instability will also display a high degree of democratic instability. In fact, volatility in democracy scores (as measured by Polity) is highly correlated with constitutional instability \((r = 0.54)\). The strength of the relationship between volatility in democracy scores and constitutional turnover invites the question of whether regime change and constitutional change are one and the same. Are constitutions simply the written reflection of real political change on the ground? If so, then our analysis reduces to one of explaining regime durability. In fact, the two constructs are closely related but not synonymous. Constitutions will often coincide with regime transition. However, it is equally likely that authoritarians and democrats will share the same constitution and that the same regime type will be responsible for multiple constitutions. One can begin to understand these dynamics by observing trends in the level of democracy and the incidence of new constitutions within individual countries. Figure 2 presents such data for four countries, Brazil, Chile, Japan, and France. Polity democracy scores are plotted across time and vertical lines mark the promulgation of “new” constitutions.

Figure 2 here

For the most part, new constitutions in these countries correspond with major shifts in the structure of authority (i.e., regime). The dates of each of Brazil’s constitutions, for example, mark the milestones of its democratic history almost perfectly. As one would imagine, however, most countries exhibit exceptions to this rule. Chile’s 1980 constitution, commissioned by Pinochet, dutifully institutionalizes the authoritarian practices initiated by the coup in 1973. Curiously enough, however, the Pinochet document has endured through the transition to democratic rule, albeit with significant amendments. That phenomenon, as we shall see, is fairly uncommon in Latin America, where most major shifts are celebrated with new constitutions. Sometimes constitutions are rearguard actions: the Japanese Constitution of 1889 served to consolidate an authoritarian structure around the Meiji empire in the face of demands for greater democracy. But Japan’s overall history has been one of punctuated equilibrium, with jump-shifts in a democratic direction marked by Constitutional change. French history also shows

\(^{20}\) The Polity IV project scores every independent country on a scale of -10 (most autocratic) to 10 (most democratic) from 1816-2004 (Marshall et al. 2006).
\(^{21}\) Using regime-type, as measured by Cheibub and Ghandi (2004), constitutions written under democratic regimes have a significantly longer lifespan than those written under authoritarian regimes \((t=7.71\) and \(p<0.00\)). Specifically, constitutions written under democratic regimes last, on average, 17 years longer than those written under authoritarian regimes.
significant shifts in levels of democracy around the time of constitutional change, but it is not always in a more
democratic direction—suggesting some basis for Anglo-American stereotypes.

It may well be that, as Jefferson suggested, democratic states can function effectively with a high degree of
constitutional turnover. Our data, however, suggests that they cannot, or at least have not. France is one of the few
stable democracies to have maintained democracy through periodic revision of its founding document, and France’s
turnover is well above average. Moreover, while some countries with strong democratic traditions may be able to
withstand a certain degree of revision, fragile democracies in the developing world likely cannot afford such a
luxury. In fact, the evidence presented above suggests the democratic and economic future of these developing
countries may depend, at least partially, on the endurance of their constitutions.

4. WHY MIGHT CONSTITUTIONS ENDURE?

The heart of our inquiry is to understand why some constitutions endure and others do not. We begin with
the position articulated by Hardin (1989) and Weingast (1997) that views successful constitutions as coordination
devices that are self-enforcing. We assume that constitutions are bargains among elites that are meant—at least by
their authors—to be enduring. Unlike normal contracts, however, there is no external guarantor who will enforce
the agreement, independent of the parties. To endure, constitutions must be self-enforcing, meaning they must be
equilibria from which no party has an incentive to deviate. 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 (Orndeshook 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; dictatorship begins with political acquiescence in
the face of constitutional violations. The 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 protester will fear ending up in jail and the oppression continues. When all citizens
coordinate their expectations that others will join in the protest, however, the expectations become self-fulfilling.

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:
757). 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 are important components of constitutional
democracy: they provide the focal point for coordination and enforcement. It 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.

Beyond being self-enforcing, successful constitutions may also have the quality of being self-reinforcing. The idea
of path dependency focuses on how certain choices, once made, will provide increasing returns from
continued investment and thus lock in certain choices while foreclosing others. Though originally developed in the
context of the economy, scholars in political science and law are now turning to path dependency as an explanation
of why some phenomena endure and others do not (e.g. Pierson 2005; Hathaway 2001). For example, social norms
of coordination may be difficult to establish, but once established, are reinforced by the benefits of adhering to the
norm. So long as returns to coordination continue to increase, coordination will continue.

In the constitutional context, self-reinforcement first requires that constitutions give actors a stake in
participating in the political institutions that are established. As actors invest resources in utilizing these political
institutions, they may find that the investments pay off and return political goods to the investor. As the process
plays out over time, they may develop an increasing stake in constitutional viability.22 The public too, can gain an
increasing familiarity with and attachment to the founding document over time, making it more likely that they will
enforce the bargain.23 The self-enforcing constitution is sustained by self-reinforcing dynamics.

Despite these dynamics, every constitutional order is embedded in a larger context of technological, social
and economic change. The international environment is particularly fickle; the one enduring feature of international
law is “persistent uncertainty” (Koremenos 2005). Exogenous change means that constitutions may come under
pressure. A document that is self-enforcing when written may fall out of equilibrium as costs and benefits to various
parties change and as new social actors arise. In such cases, we should expect constitutions to adjust or die to
accommodate a new bargain.

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.24 Linking a precipitating
event to the time of death, however, does not constitute a complete autopsy. In retrospect, it is easy to attach too
much explanatory power to events simply because of their coincidence. A civil war which seems to have so
obviously foretold the end of a constitutional system will seem lethal (to constitutions) only afterwards.

The crucial question we wish to consider is whether there are features of the constitution that can help it to
endure in the face of pressures. Many constitutions may indeed withstand exogenous shocks while others fall. Also,
some events (e.g., political coup) are likely to result, to some degree, from underlying instability produced by
constitutional provisions and therefore may be endogenous. These possibilities imply a clear set of theoretical and

22 Note that this analysis deviates from one point emphasized in the current literature on self-enforcement. Weingast
emphasizes that self-enforcement requires reducing the stakes of politics so as not to trigger actors’ rational fears,
which might cause a constitutional breakdown. We agree with this point, but also note that self-reinforcement
requires raising the stakes of politics, so as to give actors an incentive to participate and to produce increasing levels
of collective goods.
23 Widner (2006: 6 n.6) provides the example of new multiparty constitutions in Africa. When leaders sought to
amend these constitutions to extend their terms beyond the original bargain, popular resistance has been effective in
countries where drafting was consultative, but not so when drafting was highly elite driven.
24 Our initial inquiry suggests that financial crises are not generally sufficient to overturn constitutions.
analytical strategies in assessing cause of death. The first is, rather obviously, to identify and measure the effect of all crises, not just those events in periods coinciding with constitutional demise. The second is to investigate the underlying structural causes of constitutional instability. These structural risk factors may be aspects of constitutions that render them more or less resilient than others, or some political, social, or economic conditions of the state that are more hospitable to constitutional survival. Thus, we begin with a very simple model in which we posit that certain precipitating factors (events) will increase the risk of mortality. Some of these factors we assume to be exogenous to the constitutional system, while some at least to some degree mediate aspects of the constitutional system. We posit a set of structural risk factors that have both direct effects on mortality and indirect effects, via certain precipitating factors. Below, we identify a set of precipitating events as well one of structural risk factors.

4.1. 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 generate inductively a set of immediate factors that lead to constitutional demise. Conceptually and analytically, it makes sense to think of precipitating events as one of two basic varieties: those that are exogenous and those that are endogenous to the constitutional system. This distinction is important when we consider the effects of the structural variables in the following section. Some structural variables may affect the lifespan directly and indirectly, to the extent that they lead to the crises and other immediate precipitating factors.

4.1.1. Exogenous Precipitating Factors

State Births, Deaths and Mergers. Traditionally, one of the first acts of a new state is to write a new constitution. This act – the “hour of the lawyers” in Dahrendorf’s (1990: 3) discussion of the stages of statehood – represents a strong signal of the state’s sovereignty as well as a covenant for the disparate factions that come together to form the state. Of course, states that came of age long before the ritual of constitution-making will have been deprived (mercifully?) of their “hour of the lawyers.” Some of these (Britain) never call in the lawyers, while others do so only much later (Thailand’s first constitution was in 1932, though the state had retained independence since its establishment in current form in the 18th century). Most states that emerge after 1800 write a new constitution within the first year of their birth. Those states that predate the United States wait an average of 85 years after 1789. Regardless of when states write their first document, these initial constitutions will very likely need to be reconsidered as a state’s boundaries change. As such, major mergers and secessions, to the extent they change the balance of power, should precipitate new constitutions. Examples range from mergers in Arab
world (e.g. the United Arab Republic in the 1960s, Iraq and Jordan in 1958, or North and South Yemen in 1991) to breakups of federations such as the Czechoslovakia or the Soviet Union.

Inter-state Conflict. Defeat in war or takeover by an outside power can lead to *occupation-imposed constitutions*. Such incidents often compromise the state’s sovereignty imperil the ruling elite, thus implying a reconsideration of the original bargain. Well known cases include Japan’s 1946 Constitution and Iraq’s 2005 Constitution. Others include Afghanistan 1979, Dominican Republic 1924, Haiti 1918 and 1932, and Cambodia 1981. Afghanistan 2003 was not a formal occupation, but had elements of heavy foreign advice. A special case of crisis after a loss in war, but not direct occupation, would be Paraguay in 1940. Note that those constitutions written during an occupation may be less stable than those originating under other circumstances, since enforcement is secured by an outside power that withdraws at some point. These constitutions are not self-enforcing at their outset, although in some cases they may become so after the occupying authority withdraws.

Diffusion. Constitutions are highly symbolic and public documents. As such, it seems likely that the adoption of new constitutions in other countries (especially in geographically or culturally proximate countries) will increase the probability of a new constitution, a process known as diffusion (Elkins and Simmons 2005). Elster (1995: 368) has observed that constitutions tend to be written in waves, typically following the end of great conflicts like World War II and the Cold War. Indeed, the distribution of new constitutions across time, see figure 3, seems to conform to a non-random process across time. The figure plots new constitution with a smoothed spline fitted to the distribution in order to detect clusters. Inspection of a few cases suggests that this temporal clustering may well be something resembling diffusion. For example, the motivation for the Chavez-led Venezuelan reform in 1999 stemmed from the 1990-91 reform in Colombia. The Venezuelan constitution has since inspired reform in Bolivia. In a recent interview, Chavez recalls:

> We discussed how to break with the past, how to overcome this type of democracy that only responds to the interests of the oligarchical sectors; how to get rid of the corruption. We had always rejected the idea of a traditional military coup, of a military dictatorship, or of a military governing junta. We were very aware of what happened in Colombia, in the years of 1990-1991, when there was a constitutional assembly – of course! – it was very limited because in the end it was subordinated to the existing powers. It was the existing powers that designed Colombia’s constitutional assembly and got it going and, therefore, it could not transform the situation because it was a prisoner of the existing powers.

Figure 3 here

4.1.2. Endogenous Precipitating Factors

Regime Change. As we discuss above, regime and constitutional transition are closely related. In fact, roughly one-third of the time, a new constitution appears after regime change (defined as a three-unit change or more in the Polity scale). These changes are largely abrupt transitions between civilian and military rule. Sometimes they are even accompanied by a social revolution that fundamentally changes the organization of society

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25 One might more broadly consider Cambodia’s UNTAC-drafted constitution of 1993 as a case of multilateral occupation, when the UN Transitional Government helped ease the country’s end of the long civil war.
26 We are currently exploring this hypothesis is some depth in another paper. See Melkinsburg, Baghdad, Tokyo, Kabul: Imposed Constitutions and Political Reconstruction, manuscript.
27 Interview with Marta Harnecker (2002)
and the economy (Iran 1979; Mexico 1917). Sometimes such regime change is accomplished through extraconstitutional mechanisms; other times it may be accomplished relying on internally legal constitutional means.

**Leadership Transition.** Our reading of the historical record suggests that new constitutions sometimes result from transitions in executive leadership, especially when the change reflects an ideological or programmatic shift. For example, the alternation of power between liberals and conservatives in many Latin American countries triggered frequent constitutional change in the 19th century. Jordan’s 1951 Constitution, passed after the assassination of King Abdullah by his son and successor, reflected a personnel shift. A constitutional change under these circumstances suggests a shift in the composition of the elite, at least compared to that of the group that reached the original constitutional bargain. It may follow that a constitution that falls under these circumstances was never a highly consensual document or that its original drafting body was not especially representative. In other cases, constitutional shift in concert with leadership shift may be built into historical custom. The various Socialist constitutions, for example, seem to follow the installation of new leaders in the Soviet Union (1936, 1977) and China (1982), a practice that was often justified by the Marxist view of evolution in stages (see Go 2003). We should note that some of these leadership changes may be extra-constitutional (i.e., coups) while some may be constitutional transitions in power. In the case of coups, of course, the result may be regime change as well as simply a change in leadership.

**Institutional Crisis.** Another internal factor is major institutional crisis, irrespective of any ideological, leadership or regime change. These crises often result from a profound dissatisfaction with the rules on the part of certain constituent parts of the state, either horizontally (e.g., across branches) or vertically (across jurisdictional levels). Typically, this dissatisfaction comes in the form of disputes between the executive and the legislature (at least within democratic regimes) and between the central and subnational governments. The United States case is instructive here. As is well-known, the Articles of Confederation suffered from a number of defects that hastened their demise. These concerned public finance, by which the national government could not raise taxes to provide for the common defense and other public goods; the inability to overcome internal barriers to trade; and the inability to issue currency. Without a strong central government, the Articles did not provide for the generation of public goods, and provoked the writing of the constitution to remedy these defects. From the point of view of this paper, this solution was the most successful ever crafted—the oldest and longest lasting constitution in the world. Another example of an internal institutional reform was the demise of Indonesia’s 1949 post-independence Constitution, federal in character, which was discarded in favor of a unitary constitution in 1955. Besides center-periphery disputes, there are cases of revision of the political system, for example from parliamentary to presidential (Philipines 1973 and France 1958).

4.2. **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 provide incentives for enforcement, particularly by citizens, and also need to provide for...
flexibility in the face of exogenous pressures. We expect that the legitimacy derived from the circumstances of a constitution’s origins as well as 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. We note that these conditions may become manifest in the endogenous precipitating factors we describe above. 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.).

4.2.1. Constitution-level Structural Factors

Legitimacy. 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).

The legitimacy of a constitution depends, in our mind, on the manner in which it is written and adopted. Constitution-making processes that are highly consensual (or, at least, appear to be so) confer legitimacy upon the product. There are two critical stages of the process (the writing and the approval stages) in which the degree of consensus becomes evident based on the degree of inclusion. With respect to the writing process, an extreme case of illegitimacy might be Burma’s current efforts. The military government there has commissioned a constitution from a group of hand-picked authors (excluding members of the opposition party that won 80% of seats in its last legislature) and cloistered the assembly in a remote location outside the capital. Of course, some degree of privacy can be quite useful under some circumstances (as scholars have noted of the Philadelphia convention). Documents arising from private settings may be legitimate as long as the group assembled is adequately representative. 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 on the other side of the spectrum from Burma may well be that of Brazil. The Brazilian constitutional convention was characterized by extraordinary public involvement, including the submission of proposals, the result of which was the longest constitution in the world. It is an unwieldy document to be sure, but a highly legitimate one. The approval process also provides for legitimacy when there is a genuine public referendum, or when the body appointed to ratify the document – if indeed one is appointed at all – is inclusive or representative of the public.

Adaptability. A well-adapted constitution is suited to the political environment at the time of its adoption. Societies do not, however, remain constant. Exogenous technological changes occur; different international configurations develop; and institutions alter the political makeup of the societies they inhabit. Even a self-enforcing constitution can fall into disequilibrium if the distributional benefits that it produces among groups change
over time (Ordeshook 1992). We should thus expect that the constitution as written at $t$ will not be optimally suited at $t+1$. All constitutions must adjust as their societies change.

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 ¾ 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, constitutional amendment is relatively simple, there may be less need for judicial reinterpretation of the constitution.

Optimal adaptation thus results from the interaction of amendment rigidity and the possibility of judicial 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 endowment of legitimacy 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 amendments 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. On the other hand, constitutions that are too easy to amend are of little value in providing stable rules for political action. These constitutions may also die young because they do not serve one of the essential purposes of constitutions. We believe there is an optimal level of adaptability in any given situation that is neither too flexible nor too rigid.

Another factor that may be relevant to the need for adaptation is the initial specificity of the constitution. Constitutions vary systematically in their level of detail. Brazil’s constitution is famous for having constitutionalized nearly everything; Thailand’s recently deceased constitution was just as long, with 336 articles and 142 pages in English translation. The American constitution, at around 7900 words, is roughly one-sixth the length of that of Brazil, and is seen as providing a framework for politics rather than a repository of policies. Some have hypothesized that specificity will lead to frequent amendments. Constitutions that are more general may allow more flexible adaptation over time.28

4.2.2. State-level Structural Characteristics

We should expect that some state environments will be more conducive to constitutional growth than others. One set of such factors, of course, are 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 constitutions that are more general may allow more flexible adaptation over time.28

28 (Berkowitz and Clay 2005) show that American states that were initially colonized by civil law countries provide far more level of detail than those colonized by common law countries and that these states also have more constitutional instability. They connect these two points with the idea that constitutions with a good deal of detail invite frequent amendment and risk exit over relatively minor issues.
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). Another 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). Ethnic homogeneity would seem to promote stability, relative to more divided societies. Finally, history should matter. It seems likely that states develop a set of norms about the role and importance of constitutions within their political culture over time. If a country has produced a long-lived constitution once, it seems likely to be able to do so in a subsequent period. Once citizens have overcome their coordination problems once, their perceived likelihood of doing so again in the future should rise, leading to more stable constitutions. On the other hand, if actors come to regard constitutions as fleeting documents not worthy of consecration, such constitutions – regardless of their attributes – will have an average risk level higher than those of other countries. We call this sort of path dependence a country’s constitutional culture, for lack of a better label.

5. ANALYTIC METHODS, MEASURES, AND DATA

5.1. Estimation Issues

We use an event history model in order to estimate the duration of constitutional systems. A variety of methodological decisions arise mostly regarding the treatment of time.29 The first issue concerns the unit of time, which for us is the year. Certainly, we would prefer a more precise date, especially since for most constitutions we have recorded the precise promulgation date in our dataset. Our other variables, however, are annual and it thus makes practical sense to use the year as the unit of time. A second issue concerns censoring -- all of the current constitutions are, of course, still alive at present and as such it is difficult to make any definitive assessment of their life expectancy. We could restrict our analysis to constitutions that have already died, but this would bias the results. One of the principal benefits of event-history analysis is that it accounts for this sort of censoring as matter of course. Another issue concerns the effect of time on the baseline hazard. That is, do constitutions have an increased, decreased, or stable risk as they age? Our intuition is that their level of risk decreases over the lifespan as constitutions crystallize, but it is clear from the baseline hazard, see figure 5 in the next section, that such an effect is non-monotonic. We begin conservatively, then, with a semi-parametric model, the Cox Proportional Hazard model, which does not impose strong restrictions on the distribution of risk across time.

In measuring the effect of events, we face the issue of how to specify the timing of their effects. The precipitating factors are events that, for the most part, occur within a single year. With respect to at least regime transition, however, change may be incremental and protracted (e.g., Mexico and Brazil) and specifying abrupt shifts is inappropriate. Also, the effects of events can lag the event some unknown amount of time. Usually, for example, constitution-making is one of the first acts following regime change. In Chile, however, Pinochet’s

29 Our approach right now is, for the most part, to acknowledge these issues and flag them for further investigation.
constitution did not come into effect until seven years after his coup d’etat. We assume for now that effects of events follow an auto-regressive function in which they decay over time with a half-life of 3 years, although we intend to investigate this lag more formally. A further issue concerns the endogenous precipitating factors that we have specified. In the models that follow, we treat these variables as exogenous. However, in order to uncover the indirect effects of some of our structural variables, we plan to adopt a simultaneous equations approach in future iterations.

5.2. Measurement of Independent Variables

Table 1 summarizes the relevant concepts, their measure, and their predicted effect on constitutional survival. Below, we describe these measures and their alternatives briefly.

Table 1 here

5.2.1. Precipitating Factors

Defeat in war is scored 1 if the country coded as having been “defeated in war” or the object of an “imposed settlement” according to information from the Correlates of War (COW). Regime transition is measured by the yearly change in the Polity score. We construct two variables, in order to capture effects of transitions in both directions. Each variable, democratic shift and authoritarian shift, records the absolute magnitude of the change whether it be toward democracy and authoritarianism, respectively, with changes in the other direction coded as zero. We code leadership transitions in two different ways, in order to capture both constitutional and extra-constitutional changes. We measure extra-constitutional transitions with Arthur Banks’ variable “coup” and constitutional transitions with the Banks variable “executive transition.” We measure internal crisis and conflict with an omnibus index in Banks that aggregates a set of events from assassination to strikes to demonstrations (see fn. 37 under Table ). The theory behind Banks’ weighting scheme is not obvious to us, and we intend to develop our own index from a subset of his items in future iterations. The diffusion variables are specified as spatial lags (see Simmons and Elkins 2004).

5.2.2. Structural Factors

We conceive of the legitimacy of the constitution as stemming from the circumstances surrounding the writing and the ratification of the document. We measure the legitimacy derived from the ratification process with a dummy variable that codes whether or not the ratification procedure involves either a public referendum or a publicly elected constitutional convention – both of which we view as strong legitimating procedures. With respect to the

31 Democratic transitions, authoritarian transitions, coups, executive transitions, and internal crisis and conflict are all lagged two years. In other words, if one of these events takes place, then it is coded as taking place for the two subsequent years as well. We included these lags because we believe it takes time to write and promulgate a constitution after any of these events.
drafting stage, we would ideally have some information on the level of inclusion in the group of constitution-writers. Such a measure is difficult to construct in systematic form (Widner 2006), so we utilize two proxy variables that should be broadly indicative of inclusion. The first is whether or not the state was occupied by a foreign power (e.g., Japan 1946 or Iraq 2005), for which we use a measure of such from the Correlates of War project. The second is the extent to which the context of the constitution-making could be characterized as democratizing. Those constitutions written under circumstances in which the state is moving (or has recently moved) towards democracy are more likely to utilize inclusive processes (or at viewed as inclusive processes). We measure this by calculating the average change in democracy (positive values meaning increased democracy) within two years of promulgation constitution. We bracket the promulgation by two years on either side in order to capture moves towards democracy that follow the drafting process.

We measure aspects of adaptability with four indicators. We measure the first, ease of amendment, very simply with the observed amendment rate for each constitution, as calculated from our chronology.\(^{32}\) An alternative, preferable in many ways, would be a formal measure based on amendment procedures.\(^{33}\) Lutz (1994), for example, has developed an index of constitutional rigidity for current constitutions. Lutz’s measure is a significant contribution, but we remain somewhat skeptical of his method of aggregation, which is based on the effects of restrictions in place in U.S. state constitutions. That the U.S. state process is analogous to national constitutions seems unlikely.\(^{34}\) Lorenz (2005) criticizes Lutz’ measure on different grounds and develops her own index. In any event, neither of these measures is ready off-the-rack for our analysis as neither cover historical constitutions. Thus, we make do with the amendment rate as our measure and note simply that we intend to exploit our own data on amendment procedures in order to build a more complete index.

The primary mechanism for interpretive flexibility is the presence of a court empowered to conduct constitutional review. Courts can and do re-interpret texts in quite profound ways: our assumption is that this can provide for needed flexibility in the face of exogenous shocks. We employ a dummy variable calculated from our own data as to whether there is any body entitled to conduct constitutional interpretation.\(^{35}\)

Many believe that, regardless of the presence or absence of constitutional review, a legal tradition based on common law as opposed to civil law will better facilitate constitutional adaptation. The basic intuition is that common law practice will adhere more closely to actual practice than will civil law rulings which tend to ignore

\(^{32}\) We take the natural log of the amendment rate for the duration analysis below. Both extremely high and extremely low amendment rates should lead to constitutional instability. This suggests a curvilinear relationship, but since our amendment rate variable only has limited variability, we do not expect to see the second half of the curve. Hence we specify a logarithmic relationship.

\(^{33}\) Our preference for a procedural measure, which we are in the process of developing, stems from two factors – one theoretical, one practical. First, we would like measure an aspect of the constitution itself and, quite clearly, the frequency of amendment could vary based on other conditions – conditions that would affect constitutional turnover. As such, the measure is very possibly endogenous. Second, our measure of amendment rate likely underestimates the number of amendments of older constitutions, since data on their change is less available.

\(^{34}\) Quite simply, there is very little cost to amending or rewriting state constitutions when there is a national constitutional guarantee of a republican form of government—that is, no risk of regime change. In a national context, exiting an old equilibrium may create risks of serious instability and fundamental regime change.

\(^{35}\) An alternative, more refined variable might consider the presence of a designated constitutional court, although we have no theory that suggests designated bodies will be systematically better interpreters than unified supreme courts.
precedent and *de facto* law. Berkowitz and Clay (2005) provide suggestive evidence that constitutions with civil law origins are longer, less stable and would die younger. Their data, however, was drawn exclusively from US States. We wish to examine whether their findings hold in the broader universe of national constitutions. We measure specificity by the word count of the constitution, with the assumption that more verbose constitutions are also those that are less general and, thus, less adaptable.

Regarding the structural attributes of the state, we measure *economic development* with a measure of energy consumption per capita (in 1000’s of pounds of coal per capita per year). This measure correlates highly with GDP per capita, which is only available post-WWII. We utilize Fearon’s (2003) measure of *ethnic fractionalization*, defined as the probability of getting two individuals with different ethnicities when drawing randomly from the entire population. We measure *state development* by the age of the state, calculated from the independence dates in Paul Hensel’s ICOW data. Our measure of *constitutional culture*, that is the norm of constitutional longevity within a state, is simply the average lifespan of previous constitutions, given at least two previous cases. This measure is admittedly imperfect on several counts, mostly because we are generalizing from the subset of countries with at least three constitutions, hence biasing the measure toward older countries.

6. THE DURATION OF CONSTITUTIONS

How long do constitutional systems usually endure? As mentioned in the introduction, their mean lifespan is about sixteen years across the world since 1789. As demonstrated by the histogram of constitutional lifespans in figure 4, the mean may not be the best indicator of central tendency. The data is highly skewed, with shorter lifespans much more prevalent than longer ones. Of course this varies 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 typical African constitution lasts around ten years with a modal lifespan of 3 years. Latin America (source of almost a third of all constitutions) does not much better at 12.4 years, with 15% of their constitutions being replaced in the first year of existence. The Dominican Republic and Haiti have even managed to write one every three years or so. Indeed, the island of Hispaniola is home to almost a tenth of the 736 constitutions written since 1789! 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 older constitutions at 32 years on average, suggesting an economic relationship parallel to that with democracy. Finally, unlike that of natural persons, the life expectancy of constitutions does not seem to be increasing. Through WWI, the average lifespan of a Constitution was 21 years, versus only 12 years in the years since. Of course, the regions of the world are represented in different proportions within these historical eras.

![Figure 4](https://example.com/figure4.png)

The central tendency in life expectancy does not tell us much about the variation in mortality across the lifespan. Does the hazard rate (i.e., the probability of death) increase, decrease, or stay the same throughout the lifespan? On the one hand, one might suspect that constitutions are more likely to wither with age as their provisions and proclamations become increasingly out of step with the populace. On the other hand, constitutions
may crystallize with time, as they grow in stature and become enmeshed in the national culture and politics of the country. Of course, the effect of time may be non-linear. For example, the hazard rate may increase through the early years before reaching an age at which it crystallizes and becomes relatively invulnerable. Another intriguing possibility is that there are certain ages or thresholds (corresponding to generational turnover perhaps) that are particularly difficult for constitutions. This sort of periodicity undergirds the critical juncture approach to political and constitutional development (e.g., Burnham 1970; Ackerman 1993).

Figure 5 below presents the Kaplan Meier Survivor Estimates. The survival estimate is the probability a constitution will last until a certain age. Each notch in a graph represents the replacement of a certain percent of constitutions at that age. By age 50, we estimate only about 25% of constitutions will survive. However, over most of this time period, the number of constitutions being replaced is relatively consistent, meaning each year about the same percentage are being replaced.

**Figure 5 here**

This can be seen more clearly by looking at the hazard rate. The hazard rate is an estimate of the probability a constitution will die at a certain age conditional upon its survival to that point; it represents the slope at each point in figure five. Figure 6 below presents hazard rates for new constitutions by their age. We restrict this analysis to the first fifty years of a constitutions life, because more than 75% of constitutions die before they reach age fifty. As a result, we tend to get very large confidence intervals after age fifty. The black line is the estimate of the hazard rate and the two gray lines represent the 95% confidence interval. 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, so it appears constitutions do not begin to crystallize until almost age 50. Constitutions, it seems, have high infant mortality; once they survive a generation or so, they may be stable for two or three. However, even an established constitution can die at some point; Sweden’s constitution lasted 165 years before it was replaced in 1974 (Congleton 2003).

**Figure 6 here**

### 6.1. Explaining the Lifespan of Constitutions

Below we sketch some preliminary results of tests of the hypotheses above. We stress the exploratory nature of these results since we are in the process of re-evaluating the model specification and sharpening our measures. Nonetheless, the results provide a preliminary sense of the role of the factors we mention above. Table 2 presents the estimates from a Cox Proportional Hazard model -- parametric models (such as the Log-logistic) 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.

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36 Negretto (2006:8) provides the example of Uruguay’s 1830 document, which was in force for 77 years. Since then, however, Uruguay has had five different constitutions.
Table 2 here

Not surprisingly we see strong support for a number of very significant precipitating factors, namely coup, authoritarian (but not democratic) transition, and internal crisis. Neighborhood, but not global, diffusion also affects the probability of a new constitution. All of these events are statistically significant in the expected direction. Among the structural variables, several findings stand out. Ethnic fragmentation and constitutional culture have effects in the predicted direction, though the magnitude of the result for ethnic fragmentation is small. The most influential variable is clearly the ease of the amendment process, as measured by the amendment rate. Figure 7 explores the size of these effects. An easily amended constitution (or at least one that is amended every year) has a 50% chance of lasting until age fifty, while literally no difficult to amend constitutions will make it to age fifty. We also see confirmation of our hypothesis regarding public ratification, which seems to lower risks of constitutional replacement. We find marginal support that constitutions written in democratizing times are more resilient and that countries with a history of longer constitutions continue that trend.

Figure 7 here

Indicators of adaptability such as a common law tradition and constitutional review, which would seem to overcome formal rigidity, do not appear significant. The common law effect is not even in the hypothesized direction. With regard to constitutional review, we have no doubt that our crude dummy variable is also insufficient to capture the presence of effective reinterpretation, since it conflates very active constitutional courts with very inactive ones. Interestingly, our model provides no support for the hypothesis of Berkowitz and Clay, who argue that shorter, framework constitutions and common law heritage will correlate with legal and constitutional stability.

7. DISCUSSION AND CONCLUSIONS

Constitutions are meant to underpin democratic politics by providing a stable environment for political interaction. Yet establishing a stable constitutional scheme appears to quite difficult, particularly in new democracies outside Western Europe and North America. This paper has set out to begin identifying structural features of the document that can prolong the lifespan of constitutions. These features should perform two tasks: contribute to the self-enforcing quality of the constitution and allow it to maintain flexibility in the face of needed change.

Constitutions work, and thus endure, only if they are self enforcing. Of course, occupied states or those under the security umbrella of an imposing state may be able to rely upon external enforcement of their constitutional commitments. Outside of these extraordinary circumstances, however, enforcement ultimately depends on citizens, who must agree on what counts as a constitutional violation to engage in enforcement. We find that constitutions promulgated by the citizens, through a referendum or constituent assembly, are significantly more enduring than are those in which citizens are not involved. Because we use a dummy variable to indicate citizen involvement, we can not determine the exact mechanism by which public participation increases endurance. Nor does our dichotomous measure indicate the level of citizen involvement necessary to reap these benefits or whether this involvement should take place during drafting or promulgation of the constitution. Nevertheless, our finding
suggests that we cannot rule out our explanation that the public’s role renders the document more legitimate and, thus, more effective as a coordination device.

The other problem constitutions face is change, in a number of different forms. Exogenous and endogenous shocks such as authoritarian regime transitions, coups, and internal conflict all increase the likelihood of constitutional replacement, as does constitutional change in neighboring countries. Yet not every constitutional regime that is subject to shocks is replaced. Nor are shocks absolutely necessary for constitutional turnover. A fair number of new constitutions occur without any cataclysmic event in sight. Certainly, some constitutions will weather such events better than others. Flexible documents, at least those with less restricted amendment procedures, will endure crises better than most. In the end, then, constitutional framers must strike a delicate balance between commitment and flexibility.
Figure 1: Constitutional Duration, FDI and Democracy

[Graph showing the relationship between constitutional age, mean foreign direct investment, and mean polity score.]
Figure 2: New Constitutions and Shifts in Authority Structure

Brazil

Chile

Japan

France

Institutional Democracy (Polity)

Year

http://law.bepress.com/alea/17th/art33
Figure 3: Temporal Clustering and Constitution Making
Figure 4: Distribution of Lifespans
Figure 5: Kaplan Meier Survival Estimates for Western Europe and South America
Figure 6: Probability of Constitutional Demise by Age (Smoothed Hazard Estimate)

http://law.bepress.com/alea/17th/art33
Figure 7: The Effect of Amendment Rate on the Estimated Survival Rate
<table>
<thead>
<tr>
<th>Category</th>
<th>Concept</th>
<th>Measure</th>
<th>Effect</th>
<th>Source</th>
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<td>Defeat in War</td>
<td>COW’s X coded as “defeat in war” or “imposed settlement”</td>
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<td>COW</td>
</tr>
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<td>Factors</td>
<td>Global diffusion</td>
<td>Number of new constitutions within previous 5 years (global)</td>
<td>-</td>
<td>CCP</td>
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<tr>
<td></td>
<td>Neighborhood diffusion</td>
<td>Number of new constitutions among immediate neighbors within previous 5 years</td>
<td>-</td>
<td>COW; CCP</td>
</tr>
<tr>
<td>Endogenous Precipitating</td>
<td>Democratic transition</td>
<td>Magnitude of yearly change in democracy score if towards democracy (zero otherwise)</td>
<td>-</td>
<td>Polity</td>
</tr>
<tr>
<td>Factors</td>
<td>Authoritarian transition</td>
<td>Magnitude of yearly change in democracy score if towards authoritarianism (zero otherwise)</td>
<td>-</td>
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<td></td>
<td>Leadership transition</td>
<td>Coup</td>
<td>-</td>
<td>Banks</td>
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<td>Change in the executive</td>
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<td>Banks</td>
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<tr>
<td></td>
<td>Internal crisis or conflict</td>
<td>Banks’ weighted conflict index(^{37})</td>
<td>-</td>
<td>Banks</td>
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<tr>
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<td>Legitimacy of ratification procedures</td>
<td>Ratification by public or constitutional convention</td>
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<td>CCP</td>
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<td>Indigenous character of constitution</td>
<td>Foreign occupation at time of drafting</td>
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<tr>
<td></td>
<td>Democratizing Constitutions</td>
<td>Average change in democracy (positive values meaning increased democracy) within two years of promulgation</td>
<td>+</td>
<td>Polity</td>
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<tr>
<td>Adaptability of Constitution</td>
<td>Ease of amendment</td>
<td>Amendment rate</td>
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<td>Constitutional review</td>
<td>Constitutional provision for a constitutional court or judicial review by an ordinary court</td>
<td>+</td>
<td>CCP</td>
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<td>Common law</td>
<td>+</td>
<td>La Porta et al.</td>
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<td>Specificity</td>
<td>Length of Constitution (words)</td>
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<td>-</td>
<td>Fearon</td>
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<td>Average lifespan of previous constitutions</td>
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<td>CCW</td>
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<td>Baseline Risk</td>
<td>Decay versus crystallization</td>
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<td>log-linear</td>
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\(^{37}\) Banks’ index sums the following events with their respective weighting in parentheses: assassinations (24), strikes (43), guerilla warfare (46), government crises (48), purges (86), riots (102), revolutions (148) anti-government demonstrations (200).
Table 2 Predicting Constitutional Transition--Cox Proportional Hazard Models

<table>
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<td>1.02</td>
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<td>(0.03)</td>
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<td>(0.26)</td>
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<td>(0.00)</td>
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Standard errors in parentheses
* significant at 10%; ** significant at 5%; *** significant at 1%
8. REFERENCES


Ackerman, Bruce. 1993. *We the People*. Harvard University Press.


