

## **The Lifespan of Written Constitutions**

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Note to participants at the USC faculty workshop: This is indeed a workshop paper in a fairly early stage. I look forward to your feedback on the paper and the broader project.

## I. INTRODUCTION<sup>1</sup>

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 fifteen years since 1789.<sup>2</sup> 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 such documents. 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.

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<sup>1</sup> 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>). One component of the project is the collection of data on the characteristics of constitutions for most states in the world. 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. 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 paper.

<sup>2</sup> 14.9 to be precise. The median lifespan is only eight years.

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.<sup>3</sup> 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 month, 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.<sup>4</sup> 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).

This paper proceeds as follows. The next section defines constitutions for purposes of our analysis, focusing on written constitutional texts. The definition is necessarily incomplete, but in our view a limited concept is necessary to answer the questions set out above. Next, in Part III, we briefly discuss the normative issues around constitutional longevity. Part IV provides some data on constitutional duration in various countries and identifies regional variation. It also provides some evidence as to the relationship between political and constitutional change. Part V provides a theory of durability, identifying internal and external risk factors for constitutions. Part VI presents an empirical analysis.

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<sup>3</sup>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, appeared 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 the greatest threat to the Afghan constitution is exogenous to the constitution, while the greatest threat to the Iraqi constitution is endogenous.

<sup>4</sup> On the Thai Constitution, see Harding, A. (2001). "May There Be Virtue: "New Asian Constitutionalism " in Thailand." *Asian Law* 3: 236-60.

## II. CONCEPTUALIZING CONSTITUTIONS

What is a Constitution? The flood of institutional research 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 Constitutions like that of Brazil's 1988 document, which attempt to constitutionalize nearly every aspect of public life, have not helped to circumscribe their meaning. Other countries such as Britain and, until recently, Saudi Arabia, have unwritten 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 (for a catalog of New Zealand's constitution, see (Palmer 2006)).

Still more confusing, it is 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.<sup>5</sup>

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,

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<sup>5</sup> 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.

often summarized as *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, at least, for that of the majority. Those who find themselves out of power may find themselves virtually unprotected, which in turn may make them more likely to resort to violence. By limiting the scope of government, constitutions make government possible (see Przeworski 1991 and Weingast 1997 for a broader discussion of this rationale).<sup>6</sup> A second function that constitutions serve is the symbolic one of defining the nation and its goals. Constitutions operate 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 an identity with 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 some confusion. 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 do share with Constitutions an important 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 its status 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.

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<sup>6</sup> 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).

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 finding 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;
- (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.

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. 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*,<sup>7</sup> while others will make minor changes to

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<sup>7</sup> 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.

a document and then christen a *new* constitution.<sup>8</sup> We record the nominal classification of these changes, but we also make a summary judgment of whether the change (however it is classified) constitutes a comprehensive shift to a new constitutional system. Both distinctions will be useful in the analysis that follows.

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, but only for recent years. Other useful cross-national and regional sources included 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). We record the promulgation year of both “new” constitutions and amendments.<sup>9</sup>

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.<sup>10</sup> 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 practical impact of constitutional provisions. We might, at

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<sup>8</sup> Cambodia’s 1989 Constitution adopted after the end of Vietnamese military occupation, may be a good example here.

<sup>9</sup> 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 documented to a lesser degree.

<sup>10</sup> This is also the definition used by Negretto in his parallel study of recent Latin American constitutions. Negretto 2006: 5. Negretto, G. (2006). *The Durability of Constitutions in Changing Environments: A Study on Constitutional Stability in Latin America*. Paper Presented at American Political Science Association Annual Meeting. Pennsylvania.

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 easier to operationalize.

### III. 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.”<sup>11</sup> Indeed, by Jefferson’s standards, our estimate of a life expectancy of 15 years may not be troubling. 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 fundamental principles more frequently.

What enduring constitutions sacrifice in terms of representation, they more than make for with respect to stability, equality, and governability.<sup>12</sup> Indeed, these outputs

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<sup>11</sup> Letter to Samuel Kercheval, July 12, 1816.

<sup>12</sup> Enduring constitutions may well have other benefits. For example, they may encourage foreign investment and facilitate economic stability by providing a secure environment for economic activity. However, our interest in this paper is in their effects on the stability and performance of democracy, effects that we see as quite critical to the survival of nascent democracies.

are, in our mind, of utmost importance for developing democracies. “Contemporary constitutions,” as Giovanni Sartori (1962: 862) somewhat cryptically asserted, “are bad constitutions.”<sup>13</sup> Sartori’s charge makes sense when we consider the three functions that, in the section above, we ascribe to constitutions: their role in 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 -- whether they be the Central Bank, interest groups, or political parties -- can take shape. Such habituation takes time. 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. Periodic changes in the fundamental rules can encourage opportunistic elites to engineer institutions for their short-term benefit. On the other hand, tying actors’ hands with respect to the rules of the game compels them to compete with more democratic methods.

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 power are strongest. But in the end, constitutions are merely pieces of paper, and their enforceability is of critical concern. What prevents the executive in most constitutional systems, with all of the power vested in that office, from transgressing the formal boundaries of behavior? As Weingast (1997; 2005) and Przeworski (1991) have pointed out, it is ultimately left to citizens – provided that they can act collectively – to guard against the usurpation of power by the sovereign. Ideally, the threat citizens pose renders constitutions self-enforcing (Weingast 2005).

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<sup>13</sup> Sartori has in mind the trend (from his perspective in 1962) to overload constitutions with excessively aspirational provisions. We extend his charge to include new constitutions of any era.

Solving their collective action problem is of course critical. Citizens, in the Weingast (1997) and Przeworski (1991) accounts, can only act collectively if they can agree upon what constitutes a violation limits to the sovereign's power. Constitutions, in this sense, serve as an important coordinating device for citizens *but only if constitutional limits are well known and respected*. This sort of familiarity with, and attachment to, founding documents comes only with time. As such, democratic consolidation depends critically on enduring constitutions.

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., Iraq), an enduring constitution can be an important source of national unity.

As an empirical question, 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. 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.

#### **IV. THE DURATION OF CONSTITUTIONS**

##### **a. Epidemiological Patterns**

How long do Constitutional systems usually endure? As mentioned in the introduction, their mean lifespan is about fifteen years across the world since 1789. Of

course this varies across generations and across regions. For example, Latin American countries fit the joke of the French-constitution-as-periodical much better than does France itself. The typical African constitution lasts less than ten years. Latin America (source of almost a third of all constitutions) does not much better at 12.4 years. 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 European and Asia, on the other hand, typically endure 32 and 17 years, respectively. OECD countries have older constitutions at 31 years on average, suggesting some economic benefits associated with constitutional stability.<sup>14</sup>

**Table 1 here**

Unlike that of natural persons, the life expectancy of constitutions does not seem to be increasing. Through WWI, the median 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. Table 2 gives a sense of the distribution of constitutional events across time for each region. As one would suspect, the constitutional history of the Americas and Western Europe goes back considerably longer than does that of Africa and Asia.

**Table 2 here**

The central tendency in life expectancy does not tell us much about the variation in mortality across the lifespan. For example, 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 become increasingly invulnerable 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

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<sup>14</sup> We do not yet consider the causal question: it is equally plausible that stability is easier to maintain in growing economies.

invulnerable.<sup>15</sup> 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 1 below presents hazard rates for new constitutions by their age. The two-humped shape suggests that a constitution is most likely to be replaced in its early forties and again should it make it to about 140 years (although the number of constitutions to have lived past 100 is quite small, so estimates of their vulnerability are somewhat uncertain).

**Figure 1 here**

Most countries with multiple Constitutions manifest a fair degree of variation in their durations. The most typical pattern is of Constitutions of a shorter duration early in a state's existence, with longer Constitutional durations as the state ages. Constitutions, it seems, have high infant mortality; once they survive a generation or so, they may be stable for two or three. However, even self-enforcing constitutions can move out of equilibrium at some point.

**b. Precipitating Causes of Constitutional Death**

A review of the constitutional histories of major countries gives us a good sense of the immediate factors that led to a document's demise. These sorts of precipitating events come in two basic varieties: (1) those that transform the state or the political regime (e.g., democratic or authoritarian), and (2) those that induce a recalibration of the regime. The distinction between these two categories has to do with whether the constitutional transition marks a change in regime type or leadership, with the assumption being that precipitating events in category 1 are more significant than those in category 2.<sup>16</sup>

*Regime/State Transformation*

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<sup>15</sup> 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.

<sup>16</sup> Admittedly, the distinction between the two categories is not crystal-clear. For example, the cases of the Arab federations typically involved temporary political choices within regimes.

1. Sometimes new constitutions reflect state *birth, death, or merger*. Examples include virtually every country when it gains independence; state mergers in the Arab world (e.g. the United Arab Republic in the 1960s, Iraq and Jordan in 1958, or North and South Yemen in 1991); and breakups of federations such as the Czechoslovakia or the Soviet Union.
2. Defeat in war or takeover by an outside power can lead to *occupation-imposed constitutions*. Well known cases include Japan's 1946 Constitution and Iraq's 2005 Constitution. Less well known cases include Afghanistan 1979, Cuba 1901, Dominican Republic 1907, 1908 and 1924 and Haiti 1918. Cambodia 1981 was such a case; 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. Afghanistan 2003 was not a formal occupation, but had elements of heavy foreign advice. A special case of this circumstance may be a crisis after a loss in war, even if not direct occupation, as in Paraguay 1940.
3. The most common reason for new constitutions is some form of *regime change*, such as democratization, military coups, or the death of monarchies. Regime change may be accompanied by a social revolution that fundamentally changes the organization of society and the economy (Iran 1979; Mexico 1917). Sometimes such constitutional change is accomplished through extra-constitutional mechanisms; other times it may be accomplished relying on internally legal constitutional means. When it leads to a new constitution, however, the old one certainly dies.

#### *Regime Calibration*

4. *Ideological, programmatic and leadership transitions*, following constitutional changes in government, are responsible for a number of constitutional deaths. For example, the various Socialist constitutions seem to follow the installation of new leaders in the Soviet Union (1936, 1977) and China (1982). 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, really reflect a personnel shift.
5. Another *internal* factor is major institutional crisis, irrespective of any ideological, leadership or regime change. 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 public good generation, 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 institution 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 (Philippines 1973). (Tom Was Sweden 1974 such a case?)
  6. Finally, a small number of constitutions may be adopted simply because of diffusion effects. Figure 2 presents evidence on the likelihood of a new constitution by different era. New constitutions tend to be written in waves (Elster 1995: 368), typically following the end of great conflicts like World War II and the Cold War. There is some anecdotal evidence of this process at work. 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. [Venezuelan President Hugo Chavez in an interview with Marta Harnecker (2002)]

**Figure 2 here**

**c. Constitutional change and political change: Do constitutions matter for democracy?**

The above discussion suggests that the promulgation of new constitutions corresponds with significant shifts in the functioning of a state's institutions. Such a pattern would suggest that constitutions are relevant to, or at least mark, real changes in political democracy. Fortunately, we do have some historical data that allow us to undertake a more rigorous empirical test of this proposition. Data from Polity (Marshall, Jaggers, and Gurr 2004) allow us to track incremental and substantial changes with respect to the selection procedures for the executive and the legislature, their powers, and their relationship, as well any restrictions on political participation. These elements are summarized in Polity's overall democracy measure, which runs from -10 to 10 and ranges from 1800 to 2002 for states with over a million citizens. These measures are, for the most part, subjective judgments about the patterns of authority that *actually* exist, not as inscribed in law. As such, they allow for the *de jure* versus *de facto* comparison that we wish to make.

Our event data records the date of promulgation of "new" constitutions as well as the date of subsequent amendments. One promising way to start is to observe trends in the level of democracy and the incidence of new constitutions within individual countries. Figure 3 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 3 here**

For the most part, new constitutions in these countries correspond with major shifts in the structure of authority. The dates of each of Brazil's constitutions, for example, mark the milestones of its political 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 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.

We should state clearly that any correspondence between these phenomena does not necessarily mean that either the direction or the actual nature of the shift is reflected in or caused by the constitution; we only know, at this point, that the shift was marked by a new constitution. To put it another way, we are not clear that constitutions die because of internal institutional configurations, or because of features of the political environment exogenous to the constitution.

One aggregate measure of the correspondence between the letter of the law and its practice is the incidence of “new” constitutions during years of democratic change, those of authoritarian change, and those of no change. We do this, more specifically, by measuring whether a new constitution was promulgated in the year of, the year before, or the year after a change was recorded in the Polity data. We reason that this three-year range captures *most* of the new constitutions that would be associated with a shift, although we recognize that some (e.g., Brazil's 1967 and Chile's 1980 documents) come several years *after* the institutional change. Nevertheless, given the prevalence of constitutional change within some countries' histories, we also wish to avoid the opposite error: picking up constitutions that have nothing to do with past or future events. Thus, a three year span makes sense but one might well view these measures as underestimates of the connection between a new constitution and institutional change.

Tables 3 and 4 present these probabilities by era and by region. For each table, we separate significant changes in an authoritarian or democratic direction (a 4-point shift or more on Polity) from more moderate changes (1-3 units).<sup>17</sup> The three eras in Table 3 follow roughly the three “waves” democracy (Huntington 1991), although each of the second and third periods include the antecedent authoritarian regression. Considering first Table 3, the most immediate impression is that, for most years, authoritarian shifts are just as likely to be coincident with a new Constitution as are democratic shifts. The exception is the post-1964 period, in which nearly half of major democratic shifts were capped by a Constitution. In other years, only a quarter to a third of either democratic or authoritarian shifts were coincident with new constitutions. Although these are likely to be underestimates, it is striking that a clear majority of large-scale shifts are unassociated with new constitutions. Not only can change occur without a Constitution, but Constitutions appear without altering the institutional landscape: even when authority structures are static, there is about a ten percent chance of a new Constitution being promulgated within a year for any given country.

**Table 3 here**

Table 4 presents these same probabilities according to region. With the exception of Eastern/Central Europe, countries are significantly more likely to constitutionalize democratic transitions than they are authoritarian transitions, at least if we consider the more significant shifts. The Eastern European difference might be explained by the dominance of ideas of socialist legality in Eastern Europe: unlike some other authoritarian regimes, Soviet communism placed great emphasis on constitutional form and the nominal use of the legal system. Another interesting observation is the regional differences in the baseline probability of constitutional change. In Latin America and Africa, there are relatively high probabilities of new constitutions even without political transition. In Asia, the Middle East, and Western Europe, these probabilities are much lower. Indeed, the Middle East has very low probabilities of any constitutional change unless there is a significant shift in either authoritarian or democratic direction.

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<sup>17</sup> As we measure change yearly, large scale changes that occur incrementally are recorded only as more moderate change.

**Table 4 here**

Another pattern to note is whether the promulgation of Constitutions follows or precedes a shift in democracy. Substantively, the question is whether Constitutions formalize already effected change, or whether they initiate such change. We measure this by estimating the probability of a constitution within the three years prior, and again within the three years subsequent, to a shift of over 3 points on the Polity scale. For democratic shifts, the probability of a new constitution in the next three years is 0.29 versus 0.20 in the previous three years. Authoritarian shifts show the same pattern: 0.25 and 0.13, respectively. This difference shouldn't be surprising. The fundamental changes recorded in the Polity data do not wait for Constitutional deliberation: they are adopted quickly, only to be codified later. In short, *constitutional change is more likely to follow political change than it is to lead to political change.*

**V. EXPLAINING CONSTITUTIONAL DURATION**

Below we sketch a preliminary model of Constitutional endurance. We think of constitutions as bargains among elites that are stable until a shock that is usually exogenous in nature – typically an international or domestic crisis – disrupts the equilibrium. The precipitating factors that are usually given as cause of death for a particular constitution typically do involve crises. However, linking a precipitating event – whether it be a war or a coup – to the time of death does not constitute a complete autopsy. Many constitutions may indeed withstand such events and others may fall due to underlying structural flaws. This implies an accounting of both the cataclysmic events that shock states and states' structural risk factors. What sorts of shocks have historically disrupted constitutional bargains? Can constitutions withstand wars, economic crisis, or dramatic shifts in leadership? Are there any structural conditions that can lower the mortality rate of constitutions? Most importantly, does the content of the constitution matter? Do certain institutional arrangements and design choices lower the risk of death? These are the questions we wish to consider in this section.

In our view, the various scenarios resulting in constitutional death result from two main factors: external political change, and the internal features of a constitution that render it able to adjust to those changing conditions. That is, certain pressures on

constitutional systems may be wholly exogenous to the constitution. The form and substance of a constitution may have no ability to affect a foreign invasion, some military coups, and revolutions. On the other hand, constitutional features *may* impact the ability of a political system to respond to or withstand certain external stresses. For example, a large debate concerns the relative merits of presidentialism and parliamentarism, and the chief measure of success is drawn from constitutional survival.<sup>18</sup> Electoral systems, though rarely constitutionalized with great detail, certainly have an impact on selection of leaders. Constitutions with divided powers may prevent internal threats to liberty but hinder the ability or emergence of leaders to respond quickly to external threats. Some have suggested that consensual democratic structures will be longer lasting than majoritarian ones, particularly in ethnically divided polities.<sup>19</sup> In sum, certain kinds of institutional configurations may have an impact on risk factors for constitutional death. We thus want to consider whether certain provisions of constitutions or mechanisms of constitutional adoption lead to a greater probability of survival.<sup>20</sup>

Later iterations of this paper will test the various propositions about presidential versus parliamentary systems and electoral systems. At this stage, we consider two

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<sup>18</sup> For example, Stepan and Skach (1993) found that, of non-OECD countries, none of the 36 new countries that emerged after World War II that adopted presidentialism were continuously democratic between 1980 and 1989, while 14 of 41 of such countries that adopted parliamentary systems were democratic during that period. (Cheibub and Limongi 2002) note that one out of every 23 presidential regimes died between 1946 and 1999, whereas only one in every 58 parliamentary regimes died. A recent paper by Boix seems to provide further support for the proposition that parliamentary systems are better for democratic survival (Boix 2005). The logic of the argument is that presidential systems tend to lead to minority executives and government gridlock; this in turn can encourage actors to take extra-constitutional steps to gain power, leading to political instability and eventually the death of democracy.

<sup>19</sup> Lijphardt; Negretto (2006: 11); but see Horowitz 2001.

<sup>20</sup> It is also difficult to untangle whether particular events that precipitate constitutional death are the result of internal and external factors. Economic crises and coups, for example, may result from internal political weakness or wholly exogenous conditions, and sorting out the connections is a highly context-specific endeavor.

crucial factors concerning the constitution: legitimacy of adoption and optimal adaptation. There are, of course, myriad other factors from comparative politics that we can test.

### **Legitimacy of adoption**

First of all, the circumstances of a constitution's adoption may be important. The fact that constitutions are typically adopted after crises suggests a fundamental paradox of constitution-making, identified by Elster (1995). On the one hand, the sense of crisis may facilitate effective bargaining, since the alternative of no bargain may carry with it significant risks. On the other hand, the crisis situation may hinder rational consideration of optimal institutions. We should not expect, and do not seem to observe, perfect tailoring of constitutional design to local conditions (see also Horowitz 2001). This provides some insight into why so many constitutions fail to take hold.

Regardless of what institutions are chosen, then, the manner in which they are selected may be important. We believe that, *ceteris paribus*, constitutions adopted with public input or blessing are more likely to survive. Such constitutions have a large endowment of legitimacy at the outset, which may prevent significant groups of citizens or elites from coordinating to disrupt the constitutional scheme. Public involvement in the adoption process provides information to potential opponents about the (poor) likelihood of coordination against the constitution, making it more difficult to overturn. Constitutions with wide public support thus may be more easily self-enforcing (Weingast 2005) and also better able to withstand exogenous threats.

### **Optimal Adaptation: the Balance Between Rigidity and Flexibility**

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. We should thus expect that the constitution as written at T1 will be optimally suited at T2. 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  $\frac{3}{4}$  of state legislatures) there may be pressures to adapt the constitution through judicial interpretation. Ackerman's famous 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 interpretation of the constitution (see also Cooter and Ginsburg 1996).

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 for all countries, 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 or 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 may have been even longer, 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. (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. Constitutions that are more general may allow more flexible adaptation over time.

### **Hypotheses and Data**

To summarize, we expect that constitutions that have a greater stock of legitimacy at the outset and provide for some flexibility (either through amendment processes or judicial interpretation) will be better able to withstand exogenous shocks. To test these hypotheses we introduce as independent variables some internal features of constitutions that may predict constitutional stability.

***Public Involvement:*** We assume that public involvement in the process of ratification of the constitution will increase its lifespan. This variable is a dummy for whether or not there is public promulgation OR a constitutional convention with publicly elected representatives to draft the constitution.

***Constitutional Flexibility/Rigidity:*** To operationalize this concept in the empirical analysis we drew on the small literature on indices of constitutional rigidity. The initial contribution by Lutz developed an index of constitutional rigidity, constructed from observed amendment rates of American states. He then tested this cross-nationally to learn if formal rigidity of the amendment process was negatively correlated with observed amendment rates. We are somewhat skeptical about his index, particularly because we do not believe state constitutional processes are analogous to those governing national constitutions. There is, quite simply, very little cost to amending or rewriting U.S. state constitutions when there is a national constitutional guarantee of a republican form of government. Lorenz (2005) criticizes Lutz' measure on different grounds and develops her own index. We are in the process of constructing our own index. In the analysis that follows in this iteration of the paper, we used observed amendment rates as a

proxy for the difficulty of the amendment process. Because we are concerned with potential curvilinear effects (either a low amendment rate or extremely high one might predict death), we also include the amendment rate squared in the model.

**Judicial Review:** The primary mechanism for interpretive flexibility is the presence of a court 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 utilize a dummy variable from our own data as to whether there is any body entitled to conduct constitutional interpretation. An alternative, more refined variable might consider the presence of a designated constitutional court.

**Specificity:** We use the length of the constitution in words at its initial promulgation to capture the level of detail in the constitution.

We also introduce a number of external variables that we think are likely to predict constitutional death or longevity. Some of these involve exogenous shocks that might precipitate death.

**State Age.** Because of instability and growing pains in the early stages of a state's founding, we expect constitutions of older states to have longer lifespans. We use a dummy variable for an infant constitution (one less than five years old) to determine if there is a special form of "infant mortality" at work in constitution-making.

**Birth:** We include a dummy variable for the first constitution in a state's history.

**Defeat in War,** as measured by the Correlates of War project;

**Regime Transition,** as measured by a shift of three or more points on the Polity democracy scale;

**Democratic Tradition.** Enduring Constitutions and a strong democratic tradition should, almost by definition, go together. If that relationship does not hold, then we might question our background assumption that a commitment to higher law (i.e., a Constitution) sustains democracy. A cursory look at the evidence suggests that, in fact, countries that have experienced long periods of democracy write fewer Constitutions whereas more democratically-troubled countries such as Haiti and the Dominican Republic shift constitutions frequently. Note that the direction of causation is likely

mutual. Serial constitution-making probably leads to historically low levels of democracy just as low levels of democracy inspire attempts to “get the institutions right” again and again and again. Our measure of democratic experience is the sum of a country’s Polity scores across years. Since we reason that more recent values should matter more than older ones, the summed democracy scores are first weighted by a factor that discounts older values by an exponential rate of decay with a half-life of 30 years.

**Coups.** Coups are quite likely the most lethal risk factor for Constitutions. Governments that come to power by extra-constitutional means -- that is, by coup – are by definition less committed to the standing Constitution. Not surprisingly, their first act is often to abrogate the Constitution and commission a new version. Such a move serves to legitimate an otherwise illegal (unconstitutional) transfer of power. Our measure of coups is from Banks (2005).

**Executive Change:** To determine if there is a relationship between leadership change and new constitutions, we introduce a variable to capture whether the head of state changed. By including this variable as well as regime change, we are controlling for the effect of the latter and examining executive change within a single regime. The data are from Arthur Banks.

**Common Law:** Finally, we introduce a common law dummy. Berkowitz and Clay provided suggestive evidence that constitutions with civil law origins were 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.

## VI. RESULTS AND DISCUSSION

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 reevaluating the model specification and sharpening our measures. Nonetheless, the results provide a rough sense of the role of the factors we mention above.

We test the hypotheses using an event history (or survival) model, a useful method for estimating duration as it explicitly incorporates time-dependence in the analysis. The estimates in Table 5 are from a Cox Proportional Hazard model, although

the parametric models (such as the Weibull) that we tested deliver approximately the same results. Several results stand out. First, countries with a strong democratic legacy are more likely to have enduring Constitutions, but the results do not exhibit statistical significance.

In terms of our primary hypotheses, initial public legitimacy does not seem to predict longevity, controlling for other factors. It is possible that this is because public promulgation processes are not always legitimizing but rather undertaken primarily for show. This finding does lend weight to those who see successful constitutions as primarily elite bargains, at least at the initial stage (see Ghai and Galli 2001).

Flexibility, on the other hand, appears to be a crucial feature of constitutional longevity. Constitutions that allow amendment more easily are more able to withstand exogenous shocks associated with coups, wars and crises. Rigid constitutions are risky constitutions. Note that our hypothesis of curvilinear effects does not seem to bear out. That suggestion was that constitutions that are *too* easy to amend may risk being tossed aside easily, but any effect is drowned out by the greater risk to rigid constitutions.

Formal rigidity can be overcome, of course, through flexible interpretation, but interesting our dummy variable for explicit mechanisms of constitutional interpretation produced a positive sign, indicating correlation with constitutional death. Our interpretation is that there may be significant period effects causing this result. Constitutional review has become much more popular in recent waves of constitution-drafting (Ginsburg 2003), which are also associated with shorter constitutions.

With respect to the specific factors that lead to the demise of Constitutions, we can report preliminary support for several of our independent variables. Regime change, executive change, and defeat in war are significantly associated with constitutional death. Interestingly, coups do not have an independent effect in the predicted direction, but because we have a separate regime change variable in the equation, the coups captured in this variable tend to be coups that occur *within* military-authoritarian regimes. These events would seem to be intuitively less likely to produce new constitutional regimes.

In subsequent versions of this paper, we will develop a more refined model, sharpen our measures, and test the robustness of the effects described above. However, the results do establish some of the basic contours of Constitutional transition that we will

build upon in future analyses. At this point, we can make four general claims about Constitutional reform and Constitutional duration. First, Constitutions track institutional changes with some level of fidelity. Second, long-term democracy and Constitutional turnover do not appear to be compatible. Third, Constitutions are fragile and major “life” events are likely to induce Constitutional transition. Finally, flexible amendment procedures seem to be a crucial factor in predicting whether a constitution can survive exogenous shocks.

## **VII. CONCLUSION**

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 internal features that can immunize constitutions from exogenous shocks. Our conclusion, that some internal features matter, opens up an important research agenda for our broader project of understanding written constitutions.

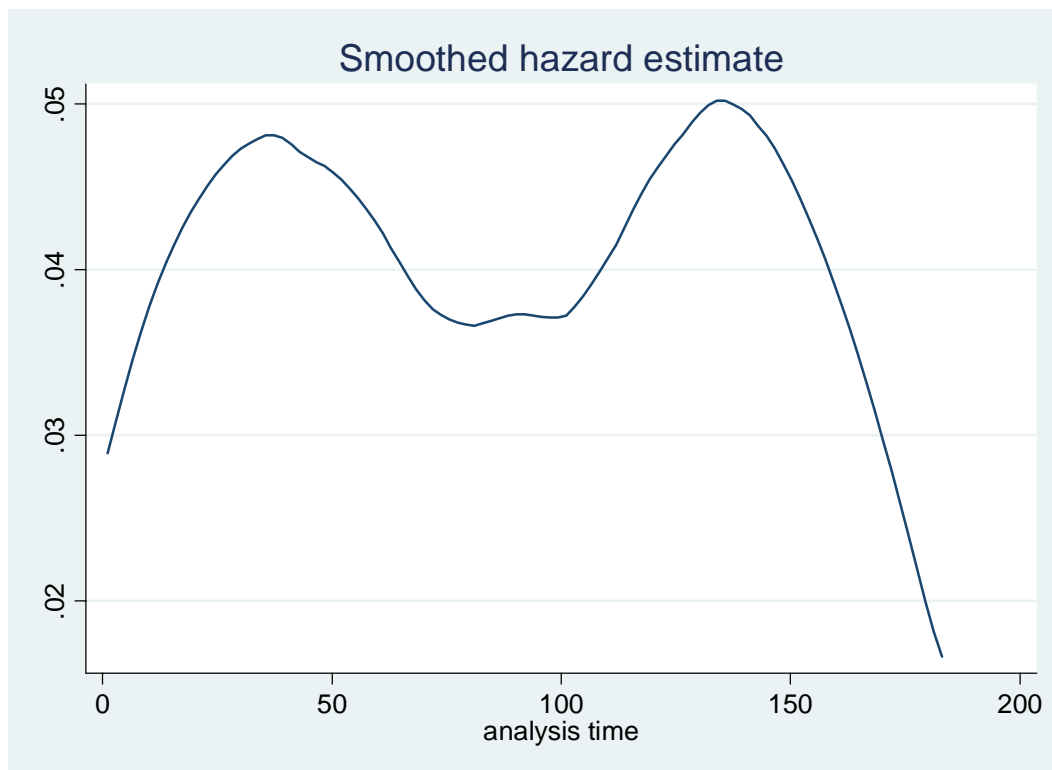
**Table 1: Average and Median Lifespans**

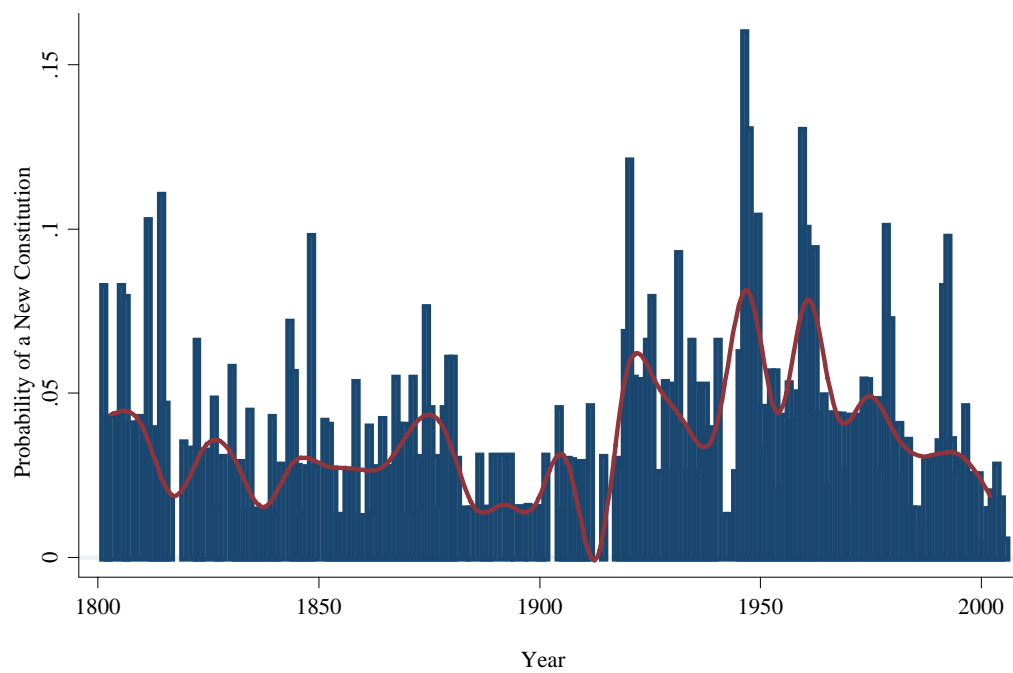
Sample	Median	Mean	St. Dev
ALL	8	14.9	22.6
Non-OECD	7	12.6	17.6
OECD	13	31.3	40.3
Africa	6	9.9	13.5
Asia	11	16.7	19.7
Central and Eastern Europe	10	10.6	9.8
Middle East	7	16.0	17.7
North America	8	39.4	61.6
South America	7	12.4	16.7
Western Europe	15	31.5	38.6

**Table 2: Distribution of Events Across Time**

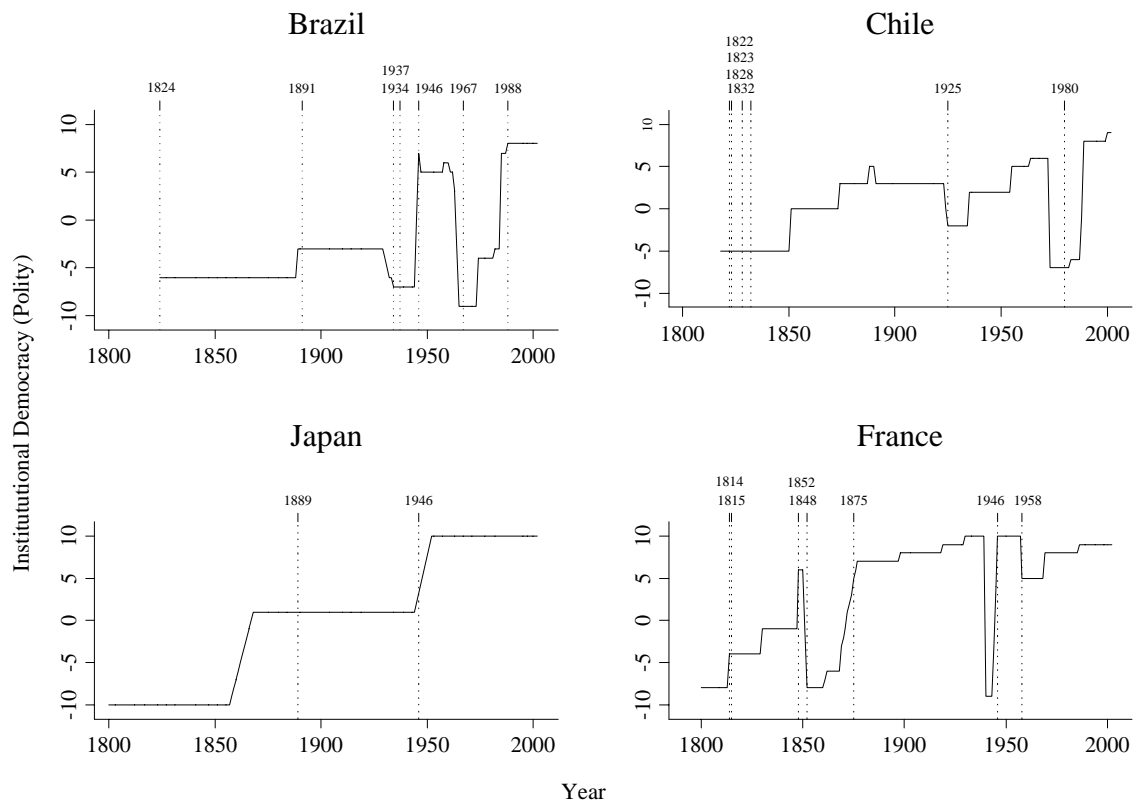
Sample	25% of Events	50% of Events	75% of Events
ALL	1923	1961	1981
Non-OECD	1929	1964	1982
OECD	1867	1930	1961
Africa	1967	1979	1992
Asia	1959	1973	1987
Central and Eastern Europe	1935	1952	1992
Middle East	1956	1965	1981
North America	1836	1851	1867
South America	1867	1921	1957
Western Europe	1864	1926	1953

**Figure 1: Probability of a New Constitution by Age**



**Figure 2. Temporal Clustering and Constitution Making**

**Figure 3. New Constitutions and Shifts in Authority Structure**



**Table 3 Probability of a New Constitution Given a Shift in Authority Structure, by Era**

<b>Institutional Change</b>	<b>1800-1926</b>	<b>1927-1963</b>	<b>1964-2002</b>
<b>Significant Authoritarian Shift</b>	0.31 36	0.39 51	0.24 87
<b>Moderate Authoritarian Shift</b>	0.18 65	0.37 82	0.23 123
<b>No Change</b>	0.07 5,726	0.12 2,338	0.10 4,899
<b>Moderate Democratic Shift</b>	0.25 155	0.36 66	0.25 221
<b>Significant Democratic Shift</b>	0.25 48	0.39 44	0.48 149

\*Probability of new constitution in upper cell; number of observations is in lower cell

**Table 4. Probability of a New Constitution Given a Shift in Authority Structure, by Region**

<b>Institutional Change</b>	<b>Africa</b>	<b>Asia/Pacific</b>	<b>Central/Eastern Europe</b>	<b>Middle East</b>	<b>Latin America</b>	<b>Western Europe</b>
<b>Significant Authoritarian Shift</b>	0.27 41	0.21 24	0.42 24	0.40 15	0.29 49	0.35 17
<b>Moderate Authoritarian Shift</b>	0.39 46	0.18 33	0.42 31	0.11 35	0.34 73	0.12 34
<b>No Change</b>	0.15 1,699	0.06 1,862	0.12 987	0.05 1,501	0.16 2,998	0.04 2,476
<b>Moderate Democratic Shift</b>	0.36 80	0.21 67	0.14 28	0.17 29	0.36 113	0.21 94
<b>Significant Democratic Shift</b>	0.57 54	0.50 34	0.15 26	0.50 16	0.42 57	0.40 42

\*Probability of new constitution in upper cell; number of observations is in lower cell.

**Table 5: Predicting Constitutional Transition**  
Cox Proportional Hazard Models

Variable	Only External Variables	Only Internal Variables	Both Internal and External Variables
Amendment Rate	-	-7.90*** (2.46)	-7.02*** (2.50)
Amendment Rate <sup>2</sup>	-	10.41 (8.06)	8.88 (8.73)
Length	-	1.17 x 10 <sup>-5</sup> * (6.14 x 10 <sup>-6</sup> )	5.00 x 10 <sup>-6</sup> (8.41x10 <sup>-6</sup> )
Public Promulgation	-	0.05 (0.16)	-0.15 (0.17)
Judicial Review	-	1.09*** (0.25)	1.09*** (0.27)
Birth	-0.36 (0.41)	-	-2.59** (1.07)
Infant (<5 Years Old)	0.32 (0.25)	-	0.72 (0.48)
Defeat in War	0.33 (0.32)	-	1.04*** (0.48)
Occupation	-0.27 (0.48)	-	-
Regime Transition	-8.83 x 10 <sup>-4</sup> *** (1.06 x 10 <sup>-4</sup> )	-	5.02 x 10 <sup>-4</sup> ** (2.14 x 10 <sup>-4</sup> )
Democracy	-2.43 x 10 <sup>-4</sup> (1.81 x 10 <sup>-4</sup> )	-	-8.14 x 10 <sup>-5</sup> (4.07 x 10 <sup>-4</sup> )
Coup	-3.10 x 10 <sup>-4</sup> * (1.87 x 10 <sup>-4</sup> )	-	-1.08 x 10 <sup>-3</sup> * (5.56 x 10 <sup>-4</sup> )
Change in Executive	3.11 x 10 <sup>-4</sup> *** (9.84 x 10 <sup>-5</sup> )	-	4.47 x 10 <sup>-4</sup> ** (1.90 x 10 <sup>-4</sup> )
Common Law	-0.29*** (0.10)	-	0.23 (0.35)
Log Likelihood	-2619.4	-543.3	-503.1
N	11283	2532	2395

\*p<0.10

\*\*p<0.05

\*\*\*p<0.01

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