

International Participation and Constitutional Survival

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Envision yourself as the bouncer at a UN margarita mixer in which the guests are national constitutions. What is the most important question you should ask each constitution that approaches the door? Answer: "Can I see some identification?" Hopefully you have experience recognizing fake IDs, because you will have to turn away a majority of the potential patrons. The point of this hypothetical and rather ridiculous introduction is to illustrate the fact that national constitutions tend to die young. On average, constitutions last a mere 19 years,¹ while only a handful of them make it to their golden years before being replaced. The goal of the following study is to analyze this phenomenon and to introduce a "new" factor that may contribute to the variation we observe in constitutional lifespan.

Over time scholars have developed a number of theories to explain constitutional endurance. One group of theories supports the importance of environmental factors or exogenous shocks, both domestic and international, when analyzing the probability of constitutional survival. Other theories focus on constitutional design. Self-enforcement mechanisms, the addition of an independent judiciary, and how inclusive the constitutional writing process and text are, are just a few of the factors studied in relation to constitutional design. Time is another element classically theorized, namely, the hypothesis that older constitutions are at less risk of replacement. What these theories are lacking is a systematic exploration of the effects that interconnection in the international community, operationalized here by membership in international governmental organizations (IGOs), may have on constitutional endurance. There are a number of reasons that we might expect the international community to have a "positive" effect on a constitution's survival.

¹ This figure, often repeated, comes from Elkins, et al.'s research.

In the following section we will briefly explore some of the current literature on constitutional endurance. Next, I will present my case detailing why the study of IGO membership is a reasonable addition to the existing literature on constitutional stability, before introducing and testing my own constitutional survival model.

Literature Review

Constitutional Design Arguments

Scholars have investigated various design-driven factors in the constitutional survival literature. One argument is that self-enforcing constitutions are more likely to survive and that different elements within constitutions make them self-enforcing. Among these elements, argue Alberts, et al., (2011) are countermajoritarian provisions. Such provisions include institutions that provide targeted protections (or federalism), limits on governmental power, super-majority requirements for amendments, and a constitutional court with judicial review. A deferential court with strong judicial review power, in particular, has been shown to contribute to constitutional stability (Weingast, et al. 2010). According to these studies, a constitutional court (or a supreme court with judicial review) and the other countermajoritarian provisions provide focal points for citizens, which help them to overcome coordination problems. According to the literature, focal points "define transgressions so that citizens can react in concert to oppose them," (Mittal 2010, 13). The assumption here is that these focal points not only help citizens to overcome coordination problems in response to transgressions, but they provide an incentive for citizens to support the constitution. Without these certain design elements, peaceful resolutions to events like exogenous shocks and bad elite behavior are less likely.

In *The Endurance of National Constitutions* (2009), Elkins, Ginsburg, and Melton present a primarily design-based argument in which they study the effects of three factors on constitutional endurance: inclusion, flexibility, and specificity. According to the authors, an inclusive drafting process, approval process, and the promise of future inclusivity through guarantees for participation increase the visibility of the constitution and imply greater consent to it, in addition to increasing the attachment that citizens have to the document (Elkins et al. 2009, 78-81). Flexibility could come in the form of constitutional courts and/or informal procedures that lower the threshold for amending the constitution. They argue that methods "for adjustment to changing conditions over time forestalls pressure for more total revision," (Elkins, et al. 2009, 83). This relationship, of course, is not completely linear, as documents that are too flexible may invite other problems that would lead to their death. Finally, specificity contains within it a number of problem-solving mechanisms that may alleviate some of the drafting and future enforcement problems. In particular, specificity aids endurance by reducing hidden information and creating sunk costs for the parties who are bargaining during the writing process, which in turn incentivizes parties to invest in the constitution's survival (Elkins, et al. 2009, 84-8).

Time

Barring temporary or transitional charters, or an extreme early-Jeffersonian take on the writing process², constitutions do not have an expiration date written into them. Depending on how you use age, explaining endurance in this manner may be exogenous or

² Thomas Jefferson originally promoted writing a 19-year time limit into all constitutions so that new generations could renegotiate the agreement instead of being locked-in by potentially archaic notions of government. After being elected president, his ideas on the subject changed.

design-related. Some analyses point to unseen and/or difficult to measure mechanisms, such as crystallization (Elkins, et al. 2009, 90-1) when hypothesizing about the effects of age. Others argue that constitutions over time generate increasing benefits for certain portions of the population (Hathaway 2003; Arthur 1989; Elkins, et al. 2009, 91), which in turn makes the population more likely to support them. Regardless of the mechanisms, the basic argument states that older constitutions are more likely to survive than newer constitutions. Authors more recently have disputed this relationship, finding that the older a constitution is, within a certain threshold, the more likely it will be replaced (Negretto 2006).

Exogenous or Environmental Factors

Any analysis of constitutional endurance should at least take into account the environment in which the constitution lives and dies. Constitutions are often created in the wake of a crisis (Elster 1995, 394-5). This could refer to any number of events including revolution, coup, civil war, political demonstrations, or even shifts in the political landscape that are not a direct consequence of the constitution, for example, the sudden rise of a new dominant party (Negretto 2006, 18; Russell 1993, 106). Exogenous factors can have an increased effect on stability due to the nature of constitutional bargaining. Since parties at the bargaining table are unable to foresee every future issue that may arise within a constitution's lifespan, which is compounded by the potential crisis situation that is forcing constitution writing in the first place, there will inevitably be gaps (Ginsburg, et al. 24, 2007). Because the international environment is uncertain (Koremenos 2005) and hidden information may be revealed over time (Ginsburg, et al. 25-6, 2007), payoffs for the

bargaining parties can change, and shocks provide a catalyst for renegotiating the previous contract.

Numerous scholars have found empirical support for the explanatory power of exogenous shocks. As Peter Russell states, "No liberal democratic state has accomplished comprehensive constitutional change outside the context of some cataclysmic situation," (Russell 106, 1993). In his analysis of the endurance of Latin American constitutions, Gabriel Negretto finds very strong support for exogenous factors. While his analysis included variables relating to constitutional design, "Of all the constitutions that failed to survive from 1946 to 2000, 66% were replaced within few years after a military coup, a civilian revolt, or a revolution," (Negretto 2006, 32). While there is clear evidence that exogenous shocks and constitutional death often happen around the same time, there are two potential problems. First, the association may not be causal. Second, if the scholar is not careful in his approach, this may only explain the death of constitutions, not their endurance. Many constitutions survive wars, uprisings, and regime change. Shocks alone cannot tell the entire story.

The Limiting Power of the International Community

As previous research shows, there are many sources of influence on the stability of constitutions. In the "increasing survival" column there are design and time arguments, while factors that speed death are often exogenous to the constitution itself, such as wars, uprisings, and natural disasters. With exception of international wars, the role of the international community in constitutional survival has been little explored. There are a number of reasons to expect, however, that a country's place in the international

community could influence whether it keeps or continually replaces its constitution.

Constitutions obviously do not exist in a domestic vacuum. A brief look at the constitutional content literature shows us why. Over the last few decades, the content of constitutions has become increasingly isomorphic. This is partly attributed to third-party countries, typically western democracies with longer surviving constitutions, who often serve as constitutional models (Bailey 1997: 73-4; Osiatynski 2003) or put direct pressure on younger states to follow their lead (Elkins, et al, 2008a,b). More recently, states will also contract with non-government-affiliated advisors to help craft new constitutions in order to resemble those of other countries.

Is this isomorphic progress towards one constitutional model necessarily good for all countries? Some scholars insist that there is no such thing as one-size-fits-all when it comes to the content of constitutions (Osiatynski 2003). Many constitutions, especially newer ones, contain institutions or systems of government that are clearly not suitable for the country in question but were borrowed from another constitution nonetheless. The recent influx of rights in these documents, even for countries that have no intentions of protecting the new rights and have shown that their behavior does not change (Hafner-Burton & Tsutsui 2007) with the additions, is another sign that content is being imported even when its not in the best interests of the drafters. In fact, huge portions of constitutions are taken word for word from others. Why would countries include unsuitable institutions, rights they do not agree with, and plagiarized language in the document that is to be considered the highest law of the land? Legitimacy, reputation, and future benefits, provide part of the answer.

I have co-opted the three, overlapping concepts above mainly from International

Institutionalism³. Among the main topics of study in the IR literature is why states enter into agreements with each other and why they abide by or break these agreements (Henkin 1990; Chayes 1993; Mearshimer 1994/95; Keohane 1997; Risse 1999; Abbott & Snidal 2000; Simmons 2000 & 2009). Some of the reasons given for compliance, even when compliance may seemingly go against a state's interests, are that it signals legitimacy, a good reputation, and stability for future relationships (political, security, economic, and so on). These same reasons for compliance can be applied to constitutional survival.

In the modern era, one of the first acts of a new country is the creation of its constitution. A constitution legitimizes the government to its constituents as well as to other countries. However, if country A's new constitution looks nothing like country B, C, and D's constitutions, the other states might not recognize it as legitimate, i.e. as an actual constitution. Like content, the survival of a constitution speaks to its and the country's legitimacy. Since constitutions establish the form of government for a country, continual replacement of this document, and therefore the government, could serve to delegitimize the government in question. As the isomorphism of content has established, countries concerned with international opinion would take steps to increase their legitimacy, which may lower the risk of constitutional replacement.

Reputation is another important concern for many governments. A country whose governmental structure and national institutions are constantly changing should decrease reputation and inhibit the promise of future relationships. Longer-living constitutions typically mean longer-living national institutions in a country and the relationships between countries rely on the stability of institutions. When a replaced constitution means

³ I have also seen this school of thought referred to as Rational Choice Institutionalism or, even worse, International Rational Choice Institutionalism.

an institution like a national bank disappears or is drastically reformatted, it can affect previous agreements between two or more countries. The more this happens, the less likely country B is to enter into agreements with country A and the promise of future relationships decreases. Therefore, countries that are interested in maintaining good reputations and the benefits from future relationships should be less likely to replace their constitutions.

Legitimacy, reputation, and future benefits are just the mechanisms that explain why the international community may influence constitutional survival. A desire to be part of and benefit from the international community requires that states regard things like legitimacy and good reputations as important, and a long-standing constitution makes attaining these qualities more feasible. While we cannot currently measure or test for the mechanisms, we can use a proxy, IGO membership, that indicates a country's willingness to participate in international relations. In the following section I detail the variables and hypotheses I will use to test the effects that involvement in the international community may have on constitutional survival.

Variables and Hypothesis

The dependent variable is constitutional endurance. Taking cues from Elkins, et al.'s research on constitutional mortality, a constitution is considered to be replaced if it is revised in such a way as to be designated as "new" or if a significant number of amendments are made in a fashion that is not outlined in the constitution itself.

The main independent variable is international involvement as measured by total IGO membership. IGOs are organizations whose members are only states. They currently

range in size from three to 193 member-states (the United Nations). Beyond simply being an indicator of willingness to participate, another motivation for using IGO membership as an independent variable is that increased participation in IGOs increases the number of outside stakeholders in your government. As the stakeholders increase so does the pressure to maintain legitimacy, reputation, and the promise of future benefits through constitutional stability.

Central Hypothesis: Countries that participate in the international community at higher levels, as measured by total IGO membership, will have a lower risk of constitutional replacement as compared to countries that participate in the international community at lower levels.

Case Selection, Data Collection, and Methods

This study is a cross-national historical analysis. I am attempting to identify associations between IGO membership and constitutional endurance that can be applied generally across all constitutions. All the data for this project come from pre-existing and widely available datasets. The constitutional survival data are from the first wave of the Comparative Constitutions Project. This dataset is organized by country-year and contains over 17,000 observations for all currently existing countries with constitutions and many former countries such as Czechoslovakia, Austria-Hungary, Baden, Saxony, and so on. The data range from 1789 to 2006 depending on the status of each country. Every observation contains information on whether a constitutional event - new, suspension, interim, amendment, or non-event – occurred during that country-year. I condensed this dataset

down into discreet constitutions, using replacement as the indicator of the previous constitution's death and coded as such. In most cases suspension times were removed from the analysis unless the constitution was reinstated following a relatively short break and was coded with the same system ID as the constitution before suspension. Interim constitutions were similarly removed for all but three countries. Interim constitutions are intended to be temporary and would function to skew the results towards shorter constitutional lifespans. In Argentina, Spain, and Iraq, however, there were several instances of interim constitutions that underwent numerous amendments and spanned a lengthy amount of time, indicating that they were being treated as typical constitutions. The interim constitutions kept in the analysis had a median survival length of 7 years, with one Spanish interim constitution lasting 31 years.

The IGO data are from the Correlates of War project's IGO State Unit dataset (v2.3). These data are also grouped by country-year and range from 1820 to 2005, with records every five years until 1965 and every year thereafter. This dataset contains 496 variables, most of which are individual IGOs recorded as a 1 or 0 depending on whether the country was a full member or not. For each country-year I summed the memberships into a total IGO membership category to be merged with the constitutions data. The effect of each additional, individual IGO is probably quite small and after a certain level this already small effect is likely decreasing or non-existent. As such, total memberships were condensed into five levels, ranging from very few or no memberships to more than 60 (Table 1).

The lowest category of international participation is 0-10 IGO memberships. This allows for obligatory membership in IGOs like the United Nations. Some regional IGOs also have obligatory membership for countries located in the region. An example of this is the

Table 1: Coding level of participation in International Community as a function of IGO membership

Level of Participation in the International Community	# of Memberships in IGOs/time period
Very low or nonexistent participation	0-10
Fairly low participation	11-20
Moderate participation	21-40
Fairly high participation	41-60
Very high participation	61+

African Union. Allowing some range in the lowest level means that countries that are actively insulating themselves from the international community can belong to these obligatory IGOs while still being recognized as having very low participation. This is a reasonable assumption as there are no states with zero IGO connections in the modern era. As the number of IGOs increase the range in the levels widens to make up for the decreased effects of each individual IGO. In the second and third levels we should be seeing countries joining more than just the obligatory IGOs and finding organizations that they are specifically interested in. By the fourth and fifth levels, we should expect that countries are actively joining organizations that match their own objectives, seeking connections to certain other member-states, or following stronger allies.

In addition to the main covariate of interest, international participation as a function of IGO membership, I include control variables in the survival model. As this project is still very much a work in progress, there are only three controls representing some of the more basic insights into constitutional survival. The first control variable is age, which for the

current model is treated as having a linear relationship with constitutional survival. Age is computed as the number of years that passed since a constitution was enacted. I also include a dummy variable for inter-state war (Sarkees & Wayman 2010) with a five-year lag added to account for the lingering effects of war on a state and a constitution's stability (Elkins, et al. 2009). A more thorough treatment of this sort of exogenous shock would incorporate data on intra-state war and other domestic conflicts, which I intend to include in future iterations of this model. Finally, I included a Polity IV score (Marshall, et al. 2010) to measure political regime characteristics. Since the Polity IV scores have a relatively wide range from -10 (autocratic) to 10 (democratic), they are treated as a continuous variable. The expectation is that democracies are more stable than autocracies.

There were numerous differences between the four datasets, meaning that the final sample is smaller than the initial 17,000 observations from the CCP. Polity IV was the most limiting dataset, as it did not include a number of the smaller, island nations and contained obvious holes in the regime characteristics data when countries were under wartime occupation. Where in-country gaps were too large to prudently estimate values, those observations were dropped. Given the consistency of the data, the final sample ranges from 1900 to 2005. Despite the numerous cases of missingness, there were 9320 observations, which includes 166 countries, nearly 600 different constitutions, and 446 replacements/deaths.

I employed a Cox Proportional Hazard model in order to determine the risk of constitutional replacement given IGO membership status, age, war involvement, and regime type. While this method is commonly used in the constitutional survival literature, incorporating it was initially challenging with these particular data. The CoxPH assumes

constant variance of the covariates over the entire lifespan of a constitution. IGO membership fluctuates nearly every year, however, and even after being grouped into wide categories, they still may change over the constitution's lifespan, meaning that IGO membership is a time-varying covariate (TVC), as are the control variables. In order to calculate a CoxPH model for these data, I used a by-year "counting process" that treats each constitution-year as an individual survival interval. A right-censoring indicator tells whether the event, i.e. constitutional death, occurred in the interval. If the constitution made it through the year then we code it as censored (Box-Steffensmeier & Jones 2005). The model returns a hazard ratio, which is the relative chance of death or failure at a time t , given that the subject has survived at least until that point. When compared to a baseline hazard of 1, we can estimate the increased or decreased hazard of death associated with our covariates.

Results

Before conducting the CoxPH, I ran a Chi-Square test (Table 2) to see if the observed number of deaths in the sample was significantly different in each IGO level than what we would expect under the null hypothesis of no association. The fifth membership level has the largest difference between observed and expected values, and as my hypothesis predicts, we observe considerably fewer constitutional deaths at the higher levels of IGO involvement than we would expect to see if there was no association. It is, however, surprising to note that in the fourth level, which still represents a seemingly high number of memberships, the difference between observed and expected number of deaths is very small. Finally, in the three lower IGO membership levels, we observe more deaths in the

sample than we would expect under the null hypothesis, but none with respective differences as large as what we found in the fifth level. With a p-value less than 0.001 we can reject the null hypothesis and conclude that these differences are not the result of random error.

Table 2: Chi-Square Test using SurvDiff function in R

Total IGO Membership	Observed # Deaths	Expected # Deaths
0-10	53	49.3
11-20	81	67
21-40	177	139.9
41-60	103	108.7
61+	32	81.1

Chi-square = 45.2 on 4 degrees of freedom
 p-value = 3.6e-09

The results of the first CoxPH model (Table 4) appear to support the performance of the fifth category, as well as the significance of age and regime type's relationship with constitutional survival. The hazard of constitutional replacement is 46% lower when a country has over 60 IGO memberships as compared to a country with 10 or fewer memberships ($p = 0.007$), holding constant age, inter-state war and regime. There is a 5% lower hazard of replacement in the 41-60 IGOs group ($p = 0.717$), while there is a 21% higher hazard of replacement for the 21-40 IGOs group ($p = 0.229$) and a 16% higher hazard of replacement in the 11-20 IGOs group ($p = 0.403$) as compared to the referent

group. P-values suggest that we do not have enough evidence to rule out random error for all groups but the fifth.

Table 3: Cox Proportional Hazard Model of Constitutional Survival

Covariates	Exp(Coefficient)	95% CI: exp(coef)		P-Value
		Lower	Upper	
Total IGO Membership^a				
11-20	1.16	0.82	1.64	0.403
21-40	1.21	0.89	1.64	0.229
41-60	0.94	0.67	1.31	0.717
61+	0.54	0.34	0.84	0.007**
Constitutional Age	0.984	0.979	0.990	0.000***
Inter-State War	1.125	0.917	1.382	0.259
Polity Score	0.972	0.959	0.986	0.000***

^a Referent group is 0-10
R² = 0.014

For the control variables, we see that every additional year a constitution survives is associated with a 2.6% lower hazard of replacement ($p = 1.37e-08$). Each additional point increase in the polity score, i.e. the more democratic/less autocratic a government is, is associated with a 2.8% lower hazard of replacement ($p = 9.42e-05$). The model indicates that the existence of inter-state war (including the five-year period following war) increases the hazard of replacement by 12.6%, but a high p-value suggests that we should not rule out random error in this result. The overall R² leaves much to be desired and tells

us that this model explains less than 2% of the variability in constitutional survival. A basic model containing only IGO membership as an explanatory variable explains less than 1% of this variability.

After running the CoxPH for the entire model, I wanted to know if the results would hold regionally. Would there be evidence that the risk of constitutional death decreases at the highest levels of international participation for all regions of the world? To check this I simplified the classifications by combining the first, second, and third participation levels and the fourth and fifth participation levels. The results are in Table 4.

Table 4: Cox Proportional Hazard Models of Constitutional Survival by Region

Region	Total IGO Membership-2 Groups	Age	Inter-State War	Polity Ranking
Americas	0.636*	0.984***	1.711	0.953**
Europe & Australia	0.810	0.990*	1.817**	0.948***
Asia	0.446*	0.976	1.189	0.998
Africa & Middle East	0.772	0.979**	0.610	0.991

^a Referent IGO Group is 0-40.

P-values: 0 '***' 0.001 '**' 0.01 '*' 0.05 '' 1

R² ranges from 0.008 to 0.022

As we can see from the regional models, it appears that the IGO membership results from the full model are being driven by the Americas and Asia. Holding constant the control variables, the hazard of constitutional replacement is 36% lower in the Americas and 55% lower in Asia when countries in these regions have over 40 IGO memberships as compared to 40 or fewer memberships. Europe, Australia, Africa, and the Middle East, on

the other hand, have hazard values that are closer to 1 and statistically insignificant for this variable. Increased age is significantly associated with lower hazard of replacement everywhere but in Asia, while regime type is associated with lower hazards in the Americas, Europe, and Australia. Inter-state war is significantly associated with an 81% increase in the hazard of constitutional replacement in Europe and Australia, and significant at $p < 0.1$ in the Americas, Africa, and the Middle East. The R^2 values for all the regional models are still very low, meaning that these variables are far from exclusively explaining constitutional survival.

Discussion

This project is merely a first step into using IGO membership and international networks to explain constitutional survival and other domestic behavior. Despite low R^2 values, there are some hints of success in the theory that international participation is positively associated with constitutional endurance. What was most surprising about these results was just how high the threshold for survival association was. In creating the five levels, I leaned toward conservatism in assuming that higher levels of participation would have decreased individual effects. My initial expectation was that there would be a steadily decreased risk of replacement as you moved to the higher levels. However, I also presumed that observations in the fourth level would be more different from the expected values under the null hypothesis than they were.

There are a couple of reasons we might expect these results. First, there may in fact be a high threshold. In the last century as the number of IGOs has increased and states join them, in part, because that is “just what states do,” it may be that a state could be party to

upwards of 40 IGOs that it does not have special concern for. Such activity would not necessarily indicate purposeful attempts at increased international participation. A second reason may also have to do with the (almost) strictly increasing number of IGOs over the last century. In coding the total membership for each country/constitution, the number of IGOs rarely dropped enough from previous years to change into a different category, for example, to change from “41-60” to “21-40.” In fact, out of all 9320 observations in the global model, this only happened 59 times. Most countries had one or more constitutional replacements between 1900 and 2005, and with each additional replacement their membership was staying the same or increasing. Since the variable does not fluctuate up and down it is more difficult to assess the relative survival over time given membership status. What we were able to see, however, is that once countries reached the highest levels of participation there was a significantly lower risk of constitutional replacement.

Future research into the association between a country’s connection to and place within the international community and constitutional behavior should include a number of the following things. First, we can go further in-depth into the IGO membership data. So far I have only tested for an association with survival based on total membership, but not all IGOs are created equal. It may be that regional IGOs do more of the heavy lifting in changing state behavior, or that IGOs focused on trade and finance are more likely to influence countries to maintain their national institutions by securing constitutional survival. It may also be fruitful to investigate different proxies for international participation aside from IGO membership. Perhaps formal alliances or diplomatic exchange create the sort of third-party stakeholders that would have a more significant effect on constitutional survival. Furthermore, it may prove useful to take a pragmatic, network-

focused approach, wherein we analyze states' centrality within larger IGO communities (Lupu & Greenhill 2012) or the intensity and frequency of states' interactions. Finally, this analysis could only be bolstered by a better understanding of the mechanisms at play in the creation of third-party stakeholders. While the literature and I have identified certain concepts such as reputation and legitimacy costs, it would be a useful venture to better operationalize these in relation to constitutional replacement. The incorporation of time-independent control variables (design arguments) and a better indicator for war and conflict are also necessary in moving forward. While there is still much to do and several ways to improve this analysis, this initial step has given us some indication that there is good reason to pursue such inquiry.

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